

EXHIBIT

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LIEUTENANT HENRY V. TOBIN III, :

Plaintiff, :

v. :

C.A. No. 04-1211 KAJ

THOMAS P. GORDON, individually; :
CHRISTOPHER A. COONS, in his :
official capacity as County Executive; :
SHERRY L. FREEBERRY, individually; :
DAVID L. SINGLETON, in his official :
capacity as Chief Administrative Officer; :
COLONEL JOHN L. CUNNINGHAM, :
RETIRED, individually; :
COLONEL DAVID F. MCALLISTER, :
individually and in his official capacity; :
and NEW CASTLE COUNTY, a :
municipal corporation, :

Defendants. :

PLAINTIFF'S SETTLEMENT PROPOSAL
TO NEW CASTLE COUNTY AND THE OFFICIAL CAPACITY DEFENDANTS,
WHO BY OPERATION OF FED.R.CIV.P. 25(d)(1) NOW INCLUDE
CHRISTOPHER A. COONS, COUNTY EXECUTIVE, AND
DAVID L. SINGLETON, CHIEF ADMINISTRATIVE OFFICER

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Dated: April 26, 2005

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INTRODUCTION

This confidential settlement package is subject to the normal protections of Federal and Delaware Rule of Evidence 408. Nothing contained herein shall be deemed to be an admission against plaintiff's interest. This package is sent in the course of compromise and settlement discussions.

This settlement package is directed only to defendant New Castle County and the two newly added official capacity defendants, who are Christopher A. Coons and David L. Singleton. It is not being offered to individual defendants Thomas P. Gordon, Sherry Freebery, retired Colonel John L. Cunningham, and Colonel David F. McAllister. It is not directed to these defendants in their individual capacities because defendants Gordon and Freebery have publically stated in numerous published newspaper articles that they want to have their day in court.¹ Accordingly, plaintiff is more than happy to oblige them and looks forward to the trial that will be held once the federal criminal racketeering proceedings against Gordon and Freebery are concluded and also to the crushing punitive damages that the jury will award to punish these individuals for their malicious and retaliatory misconduct.

THE NATURE OF THE PENDING COURT CASE

Plaintiff was ranked first on the promotion list. He now seeks compensatory and punitive damages and injunctive relief because he was denied promotion to captain three times because he testified before the grand jury and also refused to cover up a crime by CAO Freebery's son.

Plaintiff exercised his First Amendment rights to report breach of the public trust,

¹ See e.g., Brandywine Community News, 1/7/05, at p. 2; Greenville Community News, 1/11/05, at p.6.

2. Defendants. Gordon was County Executive, and is sued in his individual capacity. (Compl. ¶ 4). Freebery was the Colonel and later the CAO and is sued in her individual capacity. (Compl. ¶ 5). Cunningham was the Colonel and is sued in his individual capacity. (Compl. ¶ 6). McAllister is the Colonel and is sued in both his individual and official capacities. (Compl. ¶ 7). Defendant New Castle County is a municipal corporation under the laws of the State of Delaware. (Compl. ¶ 8).

B. Gordon's Control of the Police Department. On May 26, 2004, Gordon and Freebery were indicted by a federal grand jury for public corruption, racketeering and fraud. Various criminal schemes are outlined over the course of that 47 page document. For example, pages 12-13 of the indictment explain how Freebery and Gordon used County police officers to campaign on County time for candidate Patti Powell.

Gordon and Freebery make all personnel and promotion decisions for the NCC Police Department, and also when they demand it, they otherwise exercise total control of the day to day operations of the Department. They and NCC additionally have a policy, practice and custom of retaliating against their political opponents within the Police Department and against Lodge 5 officers who will not accede to their demands for mistreatment of police officers. (Compl. ¶ 9).

For example, their control of the Police Department is illustrated by the fact that on December 16, 2003, Cunningham plead guilty in Superior Court to the crime of conspiracy in the third degree, in violation of Title 11 § 511 of the Delaware Code. Therein he admitted that during August 2002, he agreed with Freebery that one or both of them would engage in the crime of official misconduct in violation of 11 Delaware Code § 1211(2). To that end and out of fear of the personal consequences he would suffer at the hands of Freebery, he pressured subordinate

(Compl. ¶ 13).

To accomplish these ends, in the 1996 general election Gordon sought to be elected as County Executive so he could control the operations of County government and the executive branch of government. In November of 1996, Freebery was the Colonel of the Police Department. (Compl. ¶ 14). As stated in a May 26, 2004 criminal indictment filed by the United States against Gordon and Freebery for engaging in an election racketeering scheme, on November 1, 1996, Freebery directed and caused J.H., a subordinate County Police officer and classified employee, to order County Police officers who were classified employees under J.H.'s supervision to report to the headquarters of the Gordon Campaign, during working hours, to make telephone calls for political candidates, thereby causing such County police officers to forgo executing a search warrant they were intending to execute at that time. (Compl. ¶ 15 (citing Indictment ¶ 13.A.)).

From February 1996 to August 23, 2002, Gordon and Freebery diverted and used County resources for their personal benefit and caused County employees to use County property, including computers and restricted computer databases, photocopiers, paper, and buildings to prepare campaign literature, create and maintain campaign contribution and voter databases, and perform other related campaign or political services (Indictment ¶ 14), such as the following:

- From spring to November 1996, using a County Police computer to create and maintain records of financial contributions (¶ 14. A.);
- Using a County Police computer to prepare political literature during working hours for the Gordon Campaign and also for Thomas Sharp, an incumbent and powerful State Senator from New Castle County (¶ 14. B.);

reporting it through the chain of command of the Police Department. (Compl. ¶ 19). On December 11, 2002, as required by law, plaintiff appeared before the federal grand jury and testified truthfully when questioned by the U.S. Attorney's Office about defendants' unlawful conduct. The defendants were angry and displeased that he had done so. (Compl. ¶ 20).

3. Follow up Phone Conversation with the FBI. On February 3, 2003, the lead FBI agent in the federal investigation telephoned plaintiff, and he gave the FBI a supplemental oral statement containing additional information and clarification of his grand jury testimony. (Compl. ¶¶ 21-22).

Through his oral and/or recorded statements at the secret meeting, in his grand jury testimony, and in the FBI phone call, plaintiff exercised his First Amendment right to speak out on matters of public concern and to petition government for a redress of grievances. (Compl. ¶ 24). Plaintiff sought to bring to light actual or potential wrongdoing or breach of the public trust by Gordon and Freebery, and to have those wrongs exposed to the light of day and corrected by those with authority to do so. (Compl. ¶ 26).

E. The Content of Plaintiff's Protected Speech And Petition.

1. Illegal Use of On-Duty Police Officers in the 1996 Campaign. At the secret meeting, in his grand jury testimony, and in the FBI phone call, plaintiff told the federal authorities that defendants engaged in election and campaign irregularities by illegally using on-duty New Castle County police officers for political campaigning in 1996. (Compl. ¶ 27). For example, Freeberry shut down the Police Department's Detective Division for an entire workday and forced a majority of all County detectives to participate in a literature drop for Tom Sharp. (Compl. ¶¶ 28-29). Defendants also made plaintiff solicit twenty five "volunteers" from on duty

determine whether the driver had been drinking. (Compl. ¶¶ 42-44).

Accordingly, the officers responded to Freebery's residence on Ramunno Circle and found tire tracks across her next-door neighbor's front lawn that led toward Freebery's garage door where the vehicle was locked inside. (Compl. ¶ 45). Outside the garage in the driveway a County vehicle with a warm hood was parked. Its driver had obviously just arrived and rushed inside the home. (Compl. ¶ 46). The officers knocked on Freebery's door, but no one would answer. (Compl. ¶ 47). They then telephoned Freebery's residence, but still no one answered, even though the hood was warm on the County vehicle parked in the driveway. (Compl. ¶ 48). All the lights were turned off, and there was no sign of anyone. (Compl. ¶ 49). No one answered the door or the phone. (Compl. ¶ 50). There was no search warrant or exigent circumstances to justify a forced entry into the residence. (Compl. ¶ 51). So the officers then returned to the Minnquedale Police Station to properly preserve and record the physical evidence, such as the broken auto tail light lens which could be matched up with the vehicle in Freebery's garage to which the police did not have access. (Compl. ¶ 52). The accident debris and physical evidence was secured in evidence in accord with departmental procedures. (Compl. ¶ 53).

Cunningham learned of the criminal investigation, and he then ordered plaintiff via a Captain just to clear the scene of the accident and to do nothing further. (Compl. ¶ 54). Approximately four hours after the officers had left her home, and after it was too late to administer a reliable sobriety test on the driver of the vehicle, Freebery telephoned the Lieutenant's office from her residence and spoke to plaintiff. (Compl. ¶ 55). She falsely claimed that she had been asleep the whole time and when she awoke she found a message on her answering machine. (Compl. ¶ 56). Doing his duty, plaintiff then demanded to speak with her

voters and the public at large. (Compl. ¶ 66). Nothing plaintiff said interfered with the regular operations of the Police Department. His speech did not interfere with the Department's interests in: crime fighting; fostering trust and confidence among officers; protecting the safety of officers or other members of the community. (Compl. ¶ 70). Plaintiff's speech did not threaten the authority of the Colonel to run the Department. Nothing plaintiff said damaged his relationship with any superior officer. Plaintiff did not impugn the integrity of his supervisors. (Compl. ¶ 71). Plaintiff's speech did not have a detrimental impact on any close working relationship for which personal loyalty, trust, and confidence are necessary. Plaintiff is not the alter ego of defendants. Organizationally, plaintiff is several ranks below the individual defendants in the chain of command. (Compl. ¶ 72).

Any disruption that was caused was not caused by plaintiff's speech but was instead caused by the very problems that plaintiff's speech was in fact intended to address - illegal conduct. (Compl. ¶ 73). In his position as a lieutenant, plaintiff did not make or formulate County policy. Rather, formulation of County policy is left up to others. (Compl. ¶ 74).

The individual defendants were aware of plaintiff's protected speech and petition, described above, and it angered and antagonized them. (Compl. ¶ 75).

G. Defendants' Adverse Actions and Long Course of Retaliatory Conduct Against Plaintiff: Denial of Three Promotions and Mid-Year Salary Increase. On March 3, 2003, the County announced that it was taking applications for two Police Captain positions. (Compl. ¶ 76). Plaintiff timely applied. (Compl. ¶¶ 77-78). The application process consisted of an oral board interview examination before three board members. (Compl. ¶ 79). Under County work rules, the board makes a recommendation to the Colonel based on its interviews of the

Just four days later, on March 23, 2004, defendants posted one of the two vacant Captain positions and declared that applications could be made for promotion. (Compl. ¶ 111). After plaintiff re-tested on April 29, 2004, defendants lowered plaintiff's ranking to fourth and failed to promote him to the vacant Captain position. (Compl. ¶ 112). Instead, on or about May 24, 2004, defendants promoted Elmer Setting to Captain, a clearly unqualified person to be a Captain. (Compl. ¶ 113). Setting previously was ranked last among the twelve candidates for promotion on the list for the May 2003 promotion, but in 2004, suspiciously he was ranked first. (Compl. ¶ 114).

H. Circumstantial Evidence of Retaliatory Motive.

1. Promotion Factors Usually Considered Were Ignored.

a. Plaintiff's #1 Ranking on the Oral Board. The County historically has promoted candidates in the order in which they ranked under the oral board testing. (Compl. ¶ 95). Previously on September 24, 2002, the two candidates who were ranked first by the oral board for promotions to Lieutenant and Sergeant respectively received those promotions. (Compl. ¶ 96). In fact, from 1996 to May 24, 2004, all candidates for promotion to Sergeant, Lieutenant, Captain, or other supervisory roles within the Police Department, who tested and were ranked first for a promotion, were promoted except for plaintiff. (Compl. ¶ 97).

b. The Successful Candidates Were Ranked Third and Sixth. In contrast, the board had only ranked Quinton Watson third overall for promotion to Captain, and McLaren was only sixth. (Compl. ¶ 98). One of the requirements of promotion also was completion of some college courses in police science, business, administration, management, finance, or related field. (Compl. ¶ 99). Plaintiff has a Master's degree in Human Resources

speech and petition, defendants retaliated against him in numerous ways:

- Plaintiff was denied promotion to Captain three times;
- Plaintiff was involuntarily transferred first from the Minnquedale Station to a less desirable position at the Southern Patrol Unit's Headquarters in Middletown, Delaware, a career experience which plaintiff already had acquired in his two prior assignments there and then from Middletown back up to Minnquedale in Patrol, Squad B;
- Plaintiff's job responsibilities were altered because he no longer serves as the Executive Officer to the Patrol Captain; and
- Plaintiff, in effect, was demoted because he commanded approximately 25 officers in Middletown compared to the approximately 200 officers he often commanded as Executive Officer to the Patrol Captain at Minnquedale (Compl. ¶ 116), and he now commands no officers as a member of Patrol, Squad B.

I. Witnesses Who Will Be Used to Prove Plaintiff's Case. The following fact witnesses will be used to affirmatively prove plaintiff's case:

Witness Name, Address, and Telephone Number	Subjects of Discoverable Information
Lynda Maloney	Complaint ¶¶ 1-147.
Maria Rendina	Complaint ¶¶ 1-147.
Patricia Lutz DiIenno - Manager Human Resources	Complaint ¶¶ 95-102, 104-106, 108-115.
Sally Goldsborough, Executive Assistant to Freebery, then Gordon	Complaint ¶¶ 33-64.
Captain Debra Rees	Complaint ¶¶ 76-94.
Sergeant Kathy Riddell	Complaint ¶¶ 16, 54, 62.

1. Economic Damages. Plaintiff has suffered substantial economic losses as great as \$574,000. Presently he is 50 years old. He will reach the mandatory retirement age of 55 on October 25, 2009.

a. Wage and Pension Losses. Dr. David E. Black, plaintiff's forensic economist already has analyzed plaintiff's earnings and pension losses. His report is attached as Tab A. As a result of being denied promotion to Captain on May 12, 2003, Lt. Tobin's after-tax lost earnings and pension total \$274,026. His pension loss is \$157,868. His past and future earnings and other benefits loss is \$100,747. This totals \$258,616. With a 25% effective tax rate for wages and the 28% effective tax rate for pension, economic losses must be multiplied by 1.06, producing \$274,026 in damages. See Tab A at 2.

As a result of being denied promotion to Captain on May 12, 2003, and the mid-year salary increase of two pay grades on July 19, 2004, Lt. Tobin's after-tax lost earnings and pension total \$330,947. His pension loss is \$189,637. His past and future earnings and other benefits loss is \$121,480. This totals \$311,417. With a 25% effective tax rate for wages and a 28% effective tax rate for pension, economic losses must be multiplied by 1.06, producing \$330,947 in damages. See Tab A at 2.

As a result of being denied promotion to Captain on May 12, 2003, and subsequent promotion to Major on May 24, 2004, Lt. Tobin's after-tax lost earnings and pension total \$361,265. His pension loss is \$209,687. His past and future earnings and other benefits loss is \$129,972. This totals \$339,659. Assuming a 25% effective tax rate for wages and a 28% effective tax rate for pension, economic losses must be multiplied by 1.07, producing \$361,265 in damages. See Tab A at 2.

which would justify defendants' failure to promote him. (Compl. ¶ 122).

He also has been isolated from society. McAllister has confronted Tobin's co-workers, including but not limited to Staff Sergeant Gary Worthy and New Castle County Paramedics Deputy Chief Larry Tan, to discourage them from associating with Lt. Tobin. In fact, Lt. Tobin may never know the full extent of his lost opportunities to relate and associate with others because he can be avoided without knowing the reason and without having a chance to explain the reason for the retaliatory action taken against him. (Compl. ¶ 123).

4. Humiliation. Lt. Tobin also has suffered humiliation. Many of his old friends and co-workers began to treat him as outcasts. Persons who used to be friendly with him, including but not limited to Lt. Colonel McLaren, would stop in the hall, turn briefly into an office and then immediately leave the office, and walk back down the hall in the opposite direction to avoid interacting with him.

5. Instatement. To settle this case, Lt. Tobin seeks only monetary compensation for the aforementioned injuries. Regarding the promotions he has been denied, he simply will expect fair treatment in the future and a strong no retaliation agreement from the new administration. However, if the case cannot be settled, he will seek injunctive relief in a post-trial motion following a favorable jury verdict and seek to displace incumbent superior officers in order to gain his rightful promotion. They obviously have unclean hands.

K. Defendants' Attorneys' Fees. The attorneys' fees expended so far by defendants in this case and my other three County police officer cases against Freebery and some combination

firm so far in this case is \$3,770.00 as of February 24, 2005.

3. Charles E. Butler, Esquire. Mr. Butler is an attorney for Defendants Sherry L. Freebery and Thomas P. Gordon. He also represents them in the Riddell case. The amount of taxpayer money paid to him and his firm so far in Lt. Tobin's case is unknown.

4. The Known Total for Defendants' Attorneys Fees is \$986,007.13 and Counting. As of February 24, 2005, the County has paid over \$980,000 for legal services in defense of this case and three of my other County employment cases. Here alone prior to filing an Answer, the County has spent over \$28,000 of taxpayer dollars to pay just two of the three law firms representing defendants in this case. It is unknown how much more taxpayer money has been spent to pay the third law firm involved, but we can be sure it did not work for free.

L. Plaintiff's Attorneys' Fees and Expenses. Plaintiff is represented by The Neuberger Firm, P.A., which consists of Thomas S. and Stephen J. Neuberger and is also represented by Law Office of John M. LaRosa which consists of John M. LaRosa. To date, these two firms have spent approximately \$25,000 in attorneys' time and \$5,200 for expenses in prosecuting this case. Time to settle the case is estimated at \$4,000. This all totals \$34,200.

court. First, if the speech is to be protected from retaliation, the court must determine that it addressed a matter of “public concern.” Second, the court must balance the relevant interests to determine if the government’s interests as an employer in promoting the effective and efficient fulfillment of its public responsibilities outweighs the public employee’s interest as a citizen in speaking out on matters of public concern and the value to the community at large of being free to hear such speech. Azzaro v. County of Allegheny, 110 F.3d 968, 976 (3d Cir. 1997)(en banc).

1. Matter of Public Concern. Unfortunately for defendants, “[n]o suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression.” Bridges v. State of Cal., 314 U.S. 252, 269 (1941). “[S]peech concerning public affairs is more than self-expression, it is the essence of self-government.” Holder v. City of Allentown, 987 F.2d 188, 195 (3d Cir. 1993). “[S]peech on public issues occupies the ‘highest run of the hierarchy of First Amendment values,’ and is entitled to special protection.” Connick v. Myers, 461 U.S. 138, 145 (1983)(quoting NAACP v. Clairborn Hardware Co., 458 U.S. 886, 913 (1982) and Carey v. Brown, 477 U.S. 455, 467 (1980)). “An employee’s speech addresses a matter of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community.” Pro v. Donatucci, 81 F.3d 1283, 1288 (3d Cir. 1996). This is determined by reference to the “content, form, and context of a given statement, as revealed by the whole record.” Connick, 461 U.S. at 147-48.

In Sanguigni v. Pittsburgh Bd. of Pub. Ed., 968 F.2d 393 (3d Cir. 1992), the court surveyed the law and identified a number of broad categories of cases found to be of public

a. **Our “Content” Is Criminal Wrongdoing.** “The content of the speech may help to characterize it as relating to a matter of social or political concern of the community if . . . the speaker seeks to ‘bring to light actual or potential *wrongdoing or breach of public trust*’ on the part of government officials.” Holder, 987 F.2d at 195 (quoting Connick, 461 U.S. at 148)(emphasis added).

In Baldassare v. State of N.J., an investigator in a New Jersey County Prosecutor’s office was fired for his role in an internal investigation of law enforcement officers which ultimately resulted in the suspension of two officers for wrongdoing. The Third Circuit found that Baldassare’s conduct and expression during the course of investigation was on “a matter of public concern because it attempted to expose *specific wrongs and abuses within the county government*.” Baldassare, 250 F.3d at 196 (internal punctuation omitted)(emphasis added).

The Circuit pointed out that his investigation “sought to bring to light actual or potential wrongdoing or breach of the public trust by the officers he investigated” and such allegations were of the utmost public concern. Id. at 197 (internal punctuation omitted). “Disclosing *corruption, fraud and illegality* in a government agency is a matter of significant public concern.” Id. at 196 (quoting Feldman, 43 F.3d at 829)(emphasis added). Our “jurisprudence makes clear that an internal investigation into alleged criminal actions of public employees falls squarely within the core public speech delineated in Connick.” Id. at 196-97. “[A]llegations of *corrupt practices* by government officials are of the *utmost public concern*.” Id. at 197

Ed. v. Doyle, 429 U.S. 274 (1977)(public school teacher who criticized school district policy protected); Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997)(en banc)(public employee who reported sexual harassment by a superior protected).

This is not a typical case among private litigants. It involves *serious allegations of public corruption*. It may be stating the obvious, but it bears emphasis that “the public has a substantial interest in the integrity or lack of integrity of those who serve them in public office.”

Id. at *4 (quoting U.S. v. Smith, 776 F.2d 1104, 1114 (3d Cir. 1985)(emphasis added)).

Continuing, the district court found that “[t]he public’s substantial interest in unearthing governmental improprieties requires courts to foster legitimate whistleblowing.” Id. (quoting Feldman, 43 F.3d at 830).

Plaintiff’s speech exposed defendants’ felonious criminal conduct, and he was a key player in the investigation that led to the federal criminal charges against defendants Gordon and Freebery for public corruption, racketeering and fraud. As the district court has already found in the criminal case against defendants that arose out of plaintiff’s speech,

This is a matter of *exceptional public consequence* in this District, involving allegations both of corruption in the day-to-day operations at the upper echelon of government in the State’s largest County and in the election processes foundational to that government’s legitimacy.

U.S. v. Gordon, 334 F.Supp.2d 581, 597 (D.Del. 2004)(emphasis added).

b. Form and Context. “The form and context of [] speech may help to characterize it as relating to a matter of social or political concern to the community if . . . the forum where the speech activity takes place is not confined merely to the public office where the speaker is employed.” Holder, 987 F.2d at 195. Here, Plaintiff did not speak out internally to Gordon, Freebery, Cunningham, or McAllister. Instead, he went outside the public office of the County Government and spoke to the U.S. Attorney, the FBI, the IRS, as well as the federal grand jury.

(subpoenaed testimony)).

“[P]ublic policy . . . requires that the paths which lead to the ascertainment of truth should be left as free and unobstructed as possible.” Briscoe v. LaHue, 460 U.S. 325, 333 (1983). “The function of witnesses is fundamental to the administration of justice” and “[e]very consideration of public policy requires that they should be as fearless in testifying as the judge and jury are independent in weighing his testimony.” Williams v. Hepting, 844 F.2d 138, 141 (3d Cir. 1988) (quoting Brewer v. Horowitz, 535 F.2d 830, 837 (3d Cir. 1976)); see also Worrell v. Henry, 219 F.3d 1197, 1204 (10th Cir. 2000) (“In order to encourage truthful and uninhibited testimony, the law has long afforded certain protections to witnesses”). “The context of a [grand jury] appearance raises speech to a level of public concern, regardless of its content.” Green, 105 F.3d at 887 (citing Pro, 81 F.3d at 1291). The First Amendment provides protection even when the content of the sworn testimony is “‘purely private,’ because the form and context of [the] speech [is] of public concern, i.e. an appearance to deliver sworn testimony before an adjudicatory body.” Id. at 886.

In Pro, the Third Circuit found that “the public employee’s interest in responding to a subpoena and the judicial interest in having state employees respond to subpoenas without fear of employer reprisal” justified the holding that subpoenaed testimony is protected. Pro, 81 F.3d at 1291. Similarly, “[t]he goal of grand jury proceedings, of criminal trials, and of civil trials is to resolve a dispute by gathering the facts and arriving at the truth, a goal sufficiently important to render testimony given in these contexts as speech ‘of public concern.’” Johnston v. Harris County Flood Control Dist., 869 F.2d 1565, 1291 (5th Cir. 1989) (quoted in Green, 105 F.3d at 887). The Third Circuit has justified such holdings because of “[t]he utility of uninhibited

campaign for defendant Gordon for County Executive. (Compl. ¶ 30). Plaintiff also was the Shift Commander of Patrol Squad E on duty the night of the November 30, 2001 hit-and-run accident on Yorklyn Road which was covered up by Freebery. (Compl. ¶¶ 35-36). Plaintiff was ordered by Defendant Cunningham via a Captain to clear the scene of the accident and to do nothing further. (Compl. ¶ 54).

iv. Motive. Another factor to be considered is the speaker's motivation. Brennan v. Norton, 350 F.3d 399, 413 (3d Cir. 2003); accord Versarge v. Township of Clinton N.J., 984 F.2d 1359, 1364 (3d Cir. 1993). Speech does not lose its protection if the employee speaks out as part of the meritorious performance of his job duties. See Feldman v. Philadelphia Hous. Auth., 43 F.3d 823, 830 (3d Cir. 1994); Baldassare, 250 F.3d at 197. But even when "an employee's statement is an outgrowth of his personal dispute[, this] does not prevent some aspect of it from touching upon matters of public concern." Johnson v. Lincoln Univ. of Com. Sys. of Higher Ed., 776 F.2d 443, 451 (3d Cir. 1985)(internal punctuation omitted). Indeed -

Common sense suggests that public employees, no less than other employees, will be more likely to speak out when they are disgruntled or personally dissatisfied with some aspect of his employment or employer. Nevertheless, the harm that results from silencing or chilling public speech is neither negated nor mitigated merely because the speaker may have harbored motivations that were less than altruistic.

Brennan, 350 F.3d at 413. Thus, even improper "motivations will rarely, by themselves, justify silencing speech that otherwise addresses matters concerning the public." Brennan, 350 F.3d at 413.

employer in promoting the effective and efficient fulfillment of its public responsibilities against the public employee's interest as a citizen in speaking out on matters of public concern and the value to the community at large of being free to hear such speech. Azzaro, 110 F.3d at 980; Pickering, 391 U.S. at 568; Connick, 461 U.S. at 150. If the government interest in the effective and efficient provision of services outweighs the value of speech itself, it will be held to be unprotected. Azzaro, 110 F.3d at 980. The burden of proof is on the employer here to make a "substantial showing." Waters v. Churchill, 511 U.S. 611, 674 (1994) (plurality opinion); accord Watters v. City of Phila., 55 F.3d at 816.

Importantly, "[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse, not because it hampers public functions but simply because superiors disagree with the content of employees' speech." Rankin v. McPherson, 483 U.S. 378, 384 (1987).

a. Disruption. Factors relevant in the balancing are "the extent to which the employee's speech activity disrupts the working of the office, the extent to which the employee threatens the authority of the employer to run the office, and the extent to which the employee uses the speech activity to resolve an essentially private grievance." Holder, 987 F.2d at 195. In evaluating the disruptiveness of the speech, the court should look at:

whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.

Watters, 55 F.3d at 897 (citing Rankin, 483 U.S. at 388).

Importantly, there is a presumption in favor of free speech and mere disruption is

County and in the election processes foundational to that government's legitimacy." U.S. v. Gordon, 334 F.Supp.2d at 597.

ii. Policymakers. Another consideration is the policymaking status of the public employee. Muti v. Schmidt, 96 Fed.Appx. 69, 73 (3d Cir.2004). Here, plaintiff, in his position as a lieutenant, was not a policymaker as he did not make or formulate County Policy. (Compl. at ¶ 74).

iii. Causation. Additionally, when evaluating the disruption, the court must consider whether it was caused by the employee's speech or by the employer itself. "Disruption caused by actions independent of the speech at issue cannot be equated with disruption caused by the speech itself." Watters, 55 F.3d at 897 (finding that discontent within the Police Department was caused by the "very problems to which the plaintiff's speech was directed[.]"); accord Rode, 845 F.2d at 1202 (disruption caused by a newspaper article in which employee claimed to be the victim of racial discrimination must not have been too serious because the public employer reproduced and circulated it in the workplace); Zamboni, 847 F.2d at 79 (finding public employer to have exacerbated any initial disruption by spreading word of the speech throughout the office and by ordering other employees not to associate with the speaker); Springer v. Henry, 2002 WL 389136, at *5 (finding it fatal to defendant's disruption claims that they had failed to show how the claimed disruption was caused in any way by plaintiff's speech). Similarly, any disruption in NCC government was not caused by plaintiff's actions, but was instead caused by the very widespread corruption that his speech sought to address and expose.

a question of fact, not one of law. Baldassare, 250 F.3d at 195. “But for” causation is not needed. Suppan v. Dadonna, 203 F.3d 228, 236 (3d Cir. 2000). Instead, a plaintiff need only show that his protected First Amendment rights “played any substantial role in the relevant decision.” Suppan, 203 F.3d at 236; see also Miller v. Cigna, Corp., 47 F.3d 586, 597 n.9 (3d Cir. 1995)(en banc)(“played a role” in the adverse decision).

The following legal factors will provide ample evidence for the jury to find as a fact, that the defendants, who at the time of trial will be convicted felons, retaliated against plaintiff:

1. Temporal Proximity. “[T]emporal proximity between the protected activity and the termination is sufficient to establish a causal link.” Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997); see also Zelinski v. Pennsylvania State Police, 2004 WL 1799234, at *5-6 (3d Cir. Aug. 1, 2004)(discussing the law of temporal proximity in the causation analysis). When a plaintiff engages in a pattern of protected activity and suffers an adverse action, such as a denied promotion,

shortly after the final episode of such protected activity, a fact-finder may reasonably infer that it was the aggregate of the protected activities that led to retaliatory dismissal. This inference would be particularly strong if the plaintiff can show that the decision maker lacked a pretext on which to [take adverse action against] the plaintiff until shortly before the time of [the adverse action].

San Filippo v. Bongiovanni, 30 F.3d 424, 444 (3d Cir. 1994). For example, adverse action taken against an employee two days after engaging in protected activity is “unusually suggestive.” Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989).

in this section, it is discussed in Argument III below.

plaintiff was singled out for harassing and retaliatory treatment that other lieutenants did not receive.

4. Violations of Procedures. Violations of laws, rules and procedures also have long been recognized as proof of wrongdoing. See Village of Arlington Heights v. Metropolitan Hous. Develop. Corp., 429 U.S. 252, 267 (1977) (“Departures from the normal procedural sequence also might afford evidence that *improper purposes are playing a role*. Substantive departures, too, may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.”); Stewart v. Rutgers, the State Univ., 120 F.3d 426, 434 (3d Cir. 1997) (departures from the normal procedural sequence afford evidence that *improper purposes are playing a role*); see also Bray v. Marriott Hotels, 110 F.3d 986, 992, 994 (3d Cir. 1997); Kunda v. Muhlenberg College, 621 F.2d 532, 539 (3d Cir. 1980); Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 143-44 (3d Cir. 1977). Here, for example, defendants long course of harassment and retaliation violated NCC Personnel Policy 5.10 which prohibits harassment for engaging in protected activities.

5. Plaintiff's Superior Qualifications. Also, plaintiff's superior qualifications for the position establishes a causal link between his protected speech and defendants' adverse actions. Again, plaintiff has been employed by the County as a police officer for over 25 years. (Complaint ¶ 84). He has held a supervisory position since 1989, when he was promoted to Sergeant. (Complaint ¶ 85). In 1994, he was promoted to Lieutenant, and in 1998, to Senior Lieutenant. (Complaint ¶¶ 86-87). His annual performance review received on February 14, 2003, a mere month before his application, rated him as exceeds expectations in all but one category, and his last annual performance review received on March 8, 2004, was outstanding

protected activity and the retaliation, the “intervening pattern of antagonism” by defendants proved causation. Robinson v. SEPTA, 985 F.2d 892, 895 (3d Cir. 1993); see also Estate of Smith v. Marasco, 318 F.3d 497, 513 (3d Cir. 2003) (“timing plus other evidence may be an appropriate test where the temporal proximity is not so close as to be ‘unduly suggestive’”). Similarly, in San Filippo, the adverse action took place in 1986, and the Third Circuit noted that, “[a]t the outset, we disagree with the district court’s view that San Filippo’s protected activities in 1977-79 and 1983-84 were too far removed in time to support an inference of retaliation” when the entire situation was viewed in context, in light of evidence of hostility, disparate treatment and other evidence. 30 F.3d at 444. Here, the continued retaliation and overt hostility towards plaintiff clearly demonstrates an intervening pattern of antagonism.

7. The Big Picture. “A play cannot be understood on the basis of some of its scenes but only on its entire performance, and similarly, a [retaliation] analysis must concentrate not only on individual incidents, but on the overall scenario.” Andrews v. City of Phila., 895 F.2d 1469, 1484 (3d Cir. 1990). The fact finder should not “examine each alleged incident of harassment in a vacuum. What may appear to be a legitimate justification for a single incident of harassment may look pretextual when viewed in the context of several other related incidents. The factfinder must not only look to the frequency of the incidents but to their gravity as well.” Id. (internal punctuation and citation omitted). Thus, even when individual incidents by themselves may be *de minimis* or otherwise insufficient when standing alone, when viewed together, the totality of the actions may be sufficient. Woodson, 109 F.3d at 921 (“While each piece of evidence alone is not sufficient to support an inference of a pattern of antagonistic

last among the twelve candidates for promotion on the list for the May 2003 promotion, but suspiciously was ranked first in 2004 (Compl. ¶¶ 113-114);

- involuntarily transferred plaintiff first from the Minnquedale Station on or about May 31, 2004, to a less desirable position at the Southern Patrol Unit's Headquarters in Middletown, Delaware, a career experience which plaintiff already had acquired in his two prior assignments there, in a specific attempt to scare him into silence. (Compl. ¶ 115), and then back to Minnquedale on March 4, 2005, in Patrol, Squad B, a career experience which plaintiff already acquired at least six times in previous assignments to Patrol, Squads A, D, and E;
- altered Plaintiff's job responsibilities because he no longer serves as the Executive Officer to the Patrol Captain; and
- in effect, demoted plaintiff because he commanded approximately 25 officers in Middletown and now commands no one in Patrol, Squad B compared to the approximately 200 officers he often commanded as Executive Officer to the Patrol Captain. (Compl. ¶ 116).

Accordingly, there is overwhelming record evidence that proves that plaintiff's protected activity was a substantial or motivating factor in defendants' retaliatory actions against them.

C. Same Decision Absent Protected Conduct. The burden of proof then "shifts to the defendant to show 'by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct.'" Nicholas, 227 F.3d at 144 (quoting Mount Healthy, 429 U.S. at 287). This last step is an "affirmative defense," id. and it is a question for the fact-finder. Baldassare, 250 F.3d at 195. If the employer meets this burden, the

F.3d at 442. Instead, it ranks “among the most precious of the liberties safeguarded by the Bill of Rights” and is “intimately connected, both in origin and purpose with the other First Amendment rights of free speech and free press.” United Mine Workers of America v. Illinois State Bar Ass’n, 389 U.S. 217, 222 (1967). “All these, though not identical, are inseparable.” Id. (quoting Thomas v. Collins, 323 U.S. 516, 530 (1945)). The “right to petition is cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular form of expression.” McDonald, 472 U.S. at 482. “[W]hen one files a ‘petition’ one is addressing the government and asking government to fix what . . . government has broken or has failed in its duty to repair.” San Filippo, 30 F.3d at 442.

“[T]he values in the right of petition as an important aspect of self-government are beyond question.” McDonald, 472 U.S. at 483. The right to petition “is implicit in the very idea of government, republican in form.” McDonald, 472 U.S. at 482 (quoting U.S. v. Cruikshank, 92 U.S. 542 (1876)(internal punctuation omitted)). The “fundamental importance of the right to petition [is] as a check against the government’s abuse of power.” Anderson, 125 F.3d at 162.

B. The Broad Scope of Activities Which Are Protected. In the words of James Madison, the “people ‘may communicate their will’ through direct petitions to the legislature and government officials.” McDonald, 472 U.S. at 482 (quoting 1 Annals of Cong. 738 (1789)). Accordingly, “the right to petition extends to all departments of Government.” California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972).¹⁰ It extends to “administrative

¹⁰ As Blackstone wrote long ago, “there still remains a . . . right, appertaining to every individual, namely, the right of petitioning the king, or either house of parliament, for the redress of grievances.” San Filippo, 30 F.3d at 443 n.23 (quoting 1 William Blackstone, Commentaries 143). Recognizing this, the Third Circuit has held that “[t]here is no persuasive reason for the right of petition to mean less today than it was intended to mean in England three centuries ago.”

Importantly, the protected activity analysis under the petition clause is different than that under the free speech clause. In the petition arena, there is no disruption balancing nor is there a public concern analysis. Instead, matters of purely private concern are protected, as long as the petition is not a sham. San Filippo, 30 F.3d at 440, 443; We, Inc., 174 F.3d at 330 n.2; Brennan, 350 F.3d at 417; see also San Filippo, 30 F.3d at 434-43 (the Third Circuit's extensive analysis of the issue). As the Circuit stated in Brennan, a plaintiff need only show that his petition "was not frivolous in order to make out a prima facie claim for retaliation under the Petition Clause." Brennan, 350 F.3d at 417.

Simply put, the making of a "petition is not a constitutionally permissible ground for" adverse action against anyone. San Filippo, 30 F.3d at 443. The government simply may not retaliate against those who petition it as such a result "is hardly consistent with the fundamental principles of orderly protest, which our Constitution sought to preserve by protecting our right to petition the government for redress." Anderson, 125 F.3d at 163.

D. The Facts Prove the Petition Clause Was Violated. It is clear that plaintiff also engaged in protected petitioning activity. He sought out and petitioned the Executive Branch prosecutorial authorities to report criminal wrongdoing and asked those same Executive Branch authorities to fix our broken County government which had been corrupted by eight years of defendants' unlawful practices. Thus, as a matter of law, plaintiff petitioned high Executive Branch agencies and officials, such as the U.S. Attorney, the FBI, and the IRS, and that activity was protected against retaliation by the First Amendment.

The remaining prongs, substantial or motivating factor and same decision absent protected conduct, are identical to those discussed in the free speech argument above and need

person of ordinary firmness from exercising his First Amendment rights.” Suppan, 203 F.3d at 235 (internal punctuation omitted)(emphasis added); accord Allah v. Seiverling, 229 F.3d 220, 225 (3d Cir. 2000); Muti, 96 Fed.Appx. at 74.¹² “Put another way, the retaliatory actions must be sufficiently severe to cause reasonably hardy individuals to refrain from protected activity.” Muti, 96 Fed.Appx. at 74 (internal punctuation omitted)(quoting Agosto-de-Feliciano v. Aponte-Rogue, 889 F.2d 1209, 1218 (1st Cir. 1989)(en banc). This is an objective test, not a subjective one. Garcia v. City of Trenton, 348 F.3d 726, 729 (8th Cir. 2003).¹³

As a matter of law, both individually and together, (1) denying three promotions and (2) the rest of the retaliatory actions defendants took against plaintiff, are “sufficient to deter a person of ordinary firmness from exercising his First Amendment rights.” Suppan, 203 F.3d at 235. Such an adverse action would “cause reasonably hardy individuals to refrain from protected activity.” Muti, 96 Fed.Appx. at 74.

“Determining whether a plaintiff’s First Amendment rights were adversely affected by retaliatory conduct is a fact intensive inquiry focusing on the status of the speaker, the status of the retaliator, the relationship between the speaker and the retaliator, and the nature of the retaliatory acts.” Brennan, 350 F.3d at 419 (quoting Suarez Corp. Indus. v. McGraw, 202 F.3d

¹² See Rodriguez v. Torres, 60 F.Supp.2d 334, 349 (D.N.J. 1999); Kadetsky v. Egg Harbor Township Bd. of Ed., 82 F.Supp.2d 327, 337 (D.N.J. 2000); Katzenmoyer v. City of Reading, 2001 WL 1132374, at *2 (E.D.Pa. Sept. 21, 2001); Marrero v. Camden County Bd. of Soc. Serv., 164 F.Supp.2d 455, 467 (D.N.J. 2001); Sunkett v. Misci, 183 F.Supp.2d 691, 708 (D.N.J. 2002); Kelleher v. City of Reading, 2002 WL 1067442, at *5 (E.D.Pa. May 29, 2002); Zugarek v. Southern Tioga Sch. Dist., 214 F.Supp.2d 468, 476-77 (M.D.Pa. 2002) (all applying the “sufficient to deter a person of ordinary firmness” standard).

¹³ The existence of adverse action is usually a question for the fact finder. See Suppan, 203 F.3d at 235; Allah, 229 F.3d at 225; Baldassare, 250 F.3d at 195; Muti, 96 Fed.Appx. at 69.

with just a lateral transfer, absent any loss in pay or benefits. Torre v. Casio, Inc., 42 F.3d 825, 831 n.7 (3d Cir. 1994); accord Dilenno v. Goodwill Indus. of Mid-Eastern Pa., 162 F.3d 235, 236 (3d Cir. 1998). The case law is clear that it covers many situations. See e.g. Jones v. School Dist. of Phila., 198 F.3d 403, 412 (3d Cir. 1999)(adverse action when teacher involuntarily transferred to a less desirable assignment and lost the opportunity to do the job he “sought most”); Dilenno, 162 F.3d at 236 (transferring plaintiff with bug phobia to position inspecting bags of donated clothing); Torre, 42 F.3d at 831 n.7 (transfer to a dead-end job); Mondzelewski v. Pathmark Stores, Inc., 162 F.3d 778, 787-88 (3d Cir. 1998)(small change in working hours). See also Rodriguez v. Board of Ed., 620 F.2d 362, 364-66 (2d Cir. 1980)(adverse action where transfer radically changed nature of employee’s work and resulted in “severe professional trauma.”) (internal punctuation omitted).

To illustrate, in Hampton v. Borough of Tinton Falls Police Dep’t, 98 F.3d 107 (3d Cir. 1996), a police officer spoke out and exercised his protected speech rights. Soon thereafter he was involuntarily transferred to a less desirable assignment, without any explanation. The officer deemed his transfer to be a demotion. At summary judgment, the defendants argued that the transfer was not a demotion because his rank and pay were unaffected, was merely a lateral reassignment, was part of a routine rotation schedule, and thus did not constitute adverse action. The Third Circuit rejected the argument that adverse action was lacking and reversed the grant of summary judgment for the defense. Id. at 116.

As described above, the retaliatory actions defendants took against plaintiffs, even under a Title VII standard, adversely affected their status as employees. Robinson, 120 F.3d at 1300, 1296-97. Accordingly, under both the First Amendment test and the stricter Title VII test,

536 U.S. 730, 736 (2002). If the plaintiff meets this threshold, a court must next decide whether the right allegedly violated was a clearly established one, about which a reasonable person would have known. Wilson, 526 U.S. at 609; Hope, 536 U.S. at 739. “Whether a governmental official is entitled to protection under the doctrine of qualified immunity is a ‘purely legal question.’” Rogers v. Powell, 120 F.3d 446, 454 (3d Cir. 1997)(quoting Acierno v. Cloutier, 40 F.3d 597, 609 (3d Cir. 1994)(en banc)); see also Doe v. Delie, 257 F.3d 309, 315 (3d Cir. 2001); Rouse v. Plantier, 182 F.3d 192, 196-97 (3d Cir. 1999).

A. Prong One is Satisfied. In light of the extensive factual record and the legal analysis found in Arguments I-III above, there can be no question that plaintiff has proven facts that constitute a First Amendment violation under both the speech and petition clauses. So the first prong in defeating qualified immunity has been satisfied.

B. Prong Two is Satisfied. Second, if a plaintiff meets the prong one threshold, the court next must decide whether the right violated was a clearly established one, about which a reasonable person would have known. Atkinson, 316 F.3d at 261; Saucier v. Katz, 533 U.S. 194, 201 (2001); Hope, 536 U.S. at 739; Wilson, 526 U.S. at 609; Doe 257 F.3d at 314-15. In other words, in light of prong one, would a reasonable public official be put on notice that the constitutional violation already established under prong one runs afoul of clearly established law? See Bennett v. Murphy, 274 F.3d 133, 136-37 (3d Cir. 2001)(observing that prong two operates on the “factual scenario established by the plaintiff” under prong one).

“[Q]ualified immunity applies if ‘reasonable officials in the defendants’ position at the relevant time could have believed, *in light of what was in the decided case law*, that his conduct would be lawful.” Doe, 257 F.3d at 318 (emphasis added)(quoting Good v. Dauphin County,

protecting legions of public employees in the Supreme Court, the Third Circuit and the District of Delaware, there is no way that defendants could reasonably believe that they could retaliate against plaintiff in violation of the Free Speech Clause.¹⁶ Concerning the huge body of public employee case law (only a portion of which is listed in the preceding footnote), the Third Circuit recently held that in our Circuit since 1982, the law has been clearly established that no public employee can suffer adverse action or other “retaliation for exercising his rights under the first amendment.” Baldassare, 250 F.3d at 201. Going even farther back to 1968, the Supreme Court’s Pickering opinion specifically held that a public employee’s speech critical of a public employer’s policies was protected. 391 U.S. 563.

The general legal principles from these many closely analogous cases, and those cases discussed in much greater length in Argument I above, would put any reasonable official on notice that plaintiff had clearly established First Amendment rights to be free of retaliation

¹⁶ See e.g., Baldassare v. State of N.J., 250 F.3d 188 (3d Cir. 2001)(public employee who conducted *internal investigation into wrongdoing and breach of the public trust* in a public agency protected); Feldman v. Philadelphia Hous. Auth., 43 F.3d 823 (3d Cir. 1994)(public employee who *exposed corruption, inefficiency, and other improprieties* in public agency protected); Monsanto v. Quinn, 674 F.2d 990 (3d Cir. 1982)(public employee who criticized management policies in a public agency protected); Czurlanis v. Albanese, 721 F.2d 98 (3d Cir. 1983)(public employee who criticized waste and inefficiency in public agency protected); Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988)(public employee’s criticism of racism in police department protected); O’Donnell v. Yanchulis, 875 F.2d 1059 (3d Cir. 1989)(police chief’s criticism of township government for trying to force him to fix traffic citations protected); Watters v. City of Phila., 55 F.3d 886 (3d Cir. 1995)(public employee who criticized policies in public agency protected); Pro v. Donatucci, 81 F.3d 1283 (3d Cir. 1996)(public employee who was subpoenaed to testify at supervisor’s divorce proceeding protected); Azzaro v. County of Allegheny, 110 F.3d 968 (3d Cir. 1997)(en banc)(public employee who reported sexual harassment by a superior protected); Brennan v. Norton, 350 F.3d 399 (3d Cir. 2003)(public employee who criticized policies and health hazards in a public agency protected); Pickering v. Board of Ed., 391 U.S. 563 (1968)(public school teacher who criticized school district policies protected); Mount Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274 (1977)(public school teacher who criticized school district policy protected).

“It is well settled that compensatory damages under § 1983 are governed by general tort-law compensation theory.” Allah v. Al-Hafeez, 226 F.3d 247, 250 (3d Cir. 2000); see also Memphis Comm. Sch. Dist. v. Stachura, 477 U.S. 299, 306 (1986) (“when § 1983 plaintiffs seek damages for violations of constitutional rights, the level of damages is ordinarily determined according to principles derived from the common law of torts”).

“Rights . . . do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests, and their contours are shaped by the interests they protect.” Carey v. Piphus, 435 U.S. 247, 254 (1978). “Our legal system’s concept of damages reflects this view of legal rights.” Id. “The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to plaintiff by defendant’s breach of duty.” Id. at 254-55 (quoting F. Harper & F. James, *Law of Torts* § 25.1, p. 1299 (1956) (emphasis in original)). “To that end, compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation, personal humiliation, and mental anguish and suffering.” Stachura, 477 U.S. at 307 (internal punctuation omitted); accord Allah, 226 F.3d at 250.

In another one of counsel’s recent § 1983 police cases, a federal court jury awarded \$300,000 in compensatory damages on a far weaker record than exists in Tobin’s case. In Bullen v. Chaffinch, 336 F.Supp.2d 342, 356 (D.Del. 2004), the District of Delaware recently upheld the jury’s \$300,000 award to compensate the Bullen plaintiffs for “injury to reputation . . . humiliation and emotional distress.”¹⁷ In Bullen, the damages award was based solely upon the

¹⁷ The Supreme Court has noted that the word “distress” includes “mental suffering or emotional anguish.” Carey, 435 U.S. at 264 n.20. This then encompasses the concept of pain and suffering, but also implicitly recognizes that humiliation and injury to reputation are separate

Smith v. Wade, 461 U.S. 30 (1983). Smith was a § 1983 action arising from a brutal assault against a youthful first offender while in a juvenile reformatory. A jury awarded \$25,000 in compensatory damages to the youth as well as \$5,000 in punitives. The defendant appealed the punitive damages award on two grounds. First, he argued that the proper test for punitive damages is one of “actual malicious intent - ill will, spite, or intent to injure.” Id. at 37-38. (internal punctuation omitted). Second, that the requisite standard for punitive damages had to be higher than the liability standard. Id. at 38. The Supreme Court explicitly rejected both of these arguments. Id. at 56.

As to the first argument, the Supreme Court extensively surveyed the common law both at the time and since the enactment of § 1983 in 1871, id. at 39-51, and found that

we are content to adopt the policy judgment of the common law - that reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law, should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages.

Id. at 51. The Court rejected the defendants' contentions that the higher standard of “actual malicious intent - ill will, spite, or intent to injure,” id. at 37-38 (internal punctuation omitted), was a prerequisite for punitive damages and instead held that although the higher standard would warrant consideration of punitive damages, “reckless or callous indifference to the federally protected rights of others” is all that is needed as an alternative basis for punitive damages. Id. at 56.

The Court also rejected the defendant's second argument that “the threshold for punitive damages” had to be higher “than the underlying standard for liability in the first instance.” Id. at 51. The Court observed that “[t]here has never been any general common-law rule that the

Moreover, our petition clause theory has been clearly established since the days of ancient England and also the Third Circuit exhaustively addressed the theory in the First Amendment employment context in 1994. Thus, they are not novel or poorly recognized. Lastly, the fourth exception does not apply because there are no statutory exemptions to the First Amendment's prohibition on retaliation for exercising First Amendment rights.

Importantly, none of the Supreme Court cases dealing with punitive damages since Smith v. Wade have overruled its holding. Rather, these cases either discuss the Smith standard, as in Kolstad, or deal with the entirely separate issue of constitutional limitations on the size of the award of punitive damages, not the jury's ability to award punitive damages themselves. See Browning-Ferris Indus. v. Kelco Disposal, 492 U.S. 257 (1989)(Eighth Amendment Excessive Fines Clause); Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991)(Fourteenth Amendment Due Process); TXO Prod. Corp. v. Alliance Resources Corp., 509 U.S. 443 (1993)(same); Honda Motor Co. v. Oberg, 512 U.S. 415 (1994)(same); BMW of North America v. Gore, 517 U.S. 559 (1996)(same).¹⁹

Accordingly, "intentional violations of federal law" are sufficient to trigger a jury's consideration of the appropriateness of punitive damages. Smith, 461 U.S. at 51. In the same way, "a jury may assess punitive damages in a civil rights action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Alexander v. Riga, 208 F.3d 419, 430-31

¹⁹ No doubt these due process limitations will come into play once the jury has their way with the individual defendants and gets the chance to award punitive damages. Fortunately, the federal case law will uphold multiples of the total compensatory damages award for punitives. Here, we can expect a punitive damages award of millions.

- just four days after the list ranking plaintiff as the first candidate for promotion to Captain expired on March 19, 2004, intentionally posting one of the two vacant Captain positions, callously declaring that applications could be made for promotion on March 23, 2004, and then maliciously lowering plaintiff's ranking to fourth when he re-tested on April 29, 2004. (Compl. ¶¶ 110-113);
- again intentionally failing to promote plaintiff to the vacant Captain position and instead recklessly promoting Elmer Setting, a clearly unqualified person who previously was ranked last among the twelve candidates for promotion on the list for the May 2003 promotion, but suspiciously was ranked first in 2004 (Compl. ¶¶ 113-114);
- maliciously transferring plaintiff involuntarily from the Minnquedale Station on or about May 31, 2004, to a less desirable position at the Southern Patrol Unit's Headquarters in Middletown, Delaware, a career experience which plaintiff already had acquired in his two prior assignments there, in a specific attempt to scare him into silence. (Compl. ¶ 115);
- then callously transferring plaintiff back to Minnquedale on March 4, 2005, in Patrol Squad B, a career experience which plaintiff already acquired at least six times in previous assignments to Patrol, Squads A, D, and E;
- intentionally altering Plaintiff's job responsibilities because he no longer serves as the Executive Officer to the Patrol Captain; and
- in effect, maliciously demoting plaintiff because he commanded approximately 25 officers in Middletown compared to the approximately 200 officers he often

A SETTLEMENT PROPOSAL

Because of his protected activity against these criminals, the defendants began their severe course of retaliation against him and dead ended his career. There is no defense to this unassailable proof that the cause of all these adverse actions was Lt. Tobin's speech and petition to the U.S. Attorney, the FBI, and the IRS, and his refusal to coverup Patrick Duffy's crimes.

Liability in this case is assured. There is no reasonable doubt that the jury will return a verdict for plaintiff. The only question is how outraged the jury will be at the crimes of the defendants and how high the damages verdict will be.

Plaintiff's assistance also led to the indictment of the corrupt criminal leadership of the County. Gordon and Freebery's ultimate convictions or guilty pleas are virtually assured and they also will be admissible as substantive evidence in this case. Lt. Tobin's conduct implicated matters of the highest public concern in a democracy. The jury will be duly appreciative of this brave citizen who, as an officer of the Law, treats all citizens equally.

The retaliation against plaintiff was continuous and severe. It lead to the failure of his mental and physical health, which will be documented for trial.

There are several components of damages in this case for settlement purposes. In this offer, the value of these losses will not be discounted for any probability of not succeeding on liability at trial, since failure to prove liability is out of the question. As indicated, there is no way any jury will not return a very sizeable judgment against all defendants in this case.

First, there is the value of the wage, pension and other economic losses in the case which range from \$275,000; \$331,000; \$361,000 and \$574,000. The latter two figures are for lost promotion opportunities beyond captain. His pension loss is as high as \$333,992, as explained

injury to reputation and humiliation.

With such losses, we can see how the punitive damages award against Gordon and Freebery will start at \$1.5 million each since this is simply a multiple of about one, based on the size of the compensatory damages amount. Plaintiff's punitive damages awards can even range from \$5 to \$10 million.


This case can be settled and a release given of the County and its agents in their official, but not their individual, capacities, upon the payment as compensatory damages for all claims, of \$1,474,000. A 1099 would be issued for Mr. Tobin. Only \$574,000 would be wages, the remainder is personal injuries for tax purposes.

A separate payment of \$34,200 also must be made for legal fees and costs to The Neuberger Firm, with an appropriate 1099 to that Firm. In light of the almost \$1 million paid thus far for legal services in defense of my other County cases against Freebery and some combination of Gordon, Cunningham, and/or McAllister, that payment is very, very reasonable for the quality legal services rendered to date.

This offer will expire thirty (30) calendar days from April 26, 2005.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.


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Dated: April 26, 2005

Attorney for Plaintiff

**CALCULATION OF THE PRESENT VALUE OF THE ECONOMIC LOSS
FROM LOST EARNINGS AND PENSION
DUE TO RETALIATORY DENIALS OF PROMOTION**

CONFIDENTIAL
HENRY V. TOBIN III

Prepared by

David E. Black, Ph.D.

Economist

January 20, 2005

Summary of Results, Present Values of Losses:

<u>Promotion</u>	<u>Lost Past Earnings Including Benefits</u>	<u>Lost Future Earnings Including Benefits</u>	<u>Lost Pension</u>	<u>Total Lost Earnings Plus Pension</u>	<u>Total Loss Including Compensation For Higher Tax On Lump-Sum Payment</u>
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Captain
(5/12/2003)

and then \$23,669 \$181,345 \$333,992 \$539,005 \$574,665

Lt. Colonel
(5/24/2004)

(Earnings Table 1 and Pension Table 1)

Captain
(5/12/2003)

and then \$13,631 \$116,341 \$209,687 \$339,659 \$361,265

Major
(5/24/2004)

(Earnings Table 2 and Pension Table 2)

Captain
(5/12/2003)

and then two \$16,474 \$105,306 \$189,637 \$311,417 \$330,947

pay grades
at Captain
(7/19/2004)

(Earnings Table 3 and Pension Table 3)

Captain
(5/12/2003)

\$12,150 \$88,597 \$157,868 \$258,616 \$274,026

(Earnings Table 4 and Pension Table 4)

LOSS OF EARNINGS

Mr. Tobin's loss of earnings in each year is shown in column (5) of Earnings Tables 1 - 4 as the difference between what he would have earned if he had been promoted [column(4)] and what he will earn without being promoted [column (3)].

LOSS OF CERTAIN BENEFITS

There are two additional benefits that Mr. Tobin would get with promotion to Captain and above. Instead of shift differential pay being rewarded on an hourly basis, as it is for Senior Lieutenants, Captains and above receive a stipend for working shifts. In 2004 the difference between the total annual stipend and his annualized shift differential pay is \$664. (\$735 in total annual shift stipends as a Captain minus \$71 in shift differential earnings as a Senior Lieutenant) The second benefit that Mr. Tobin would receive as a Captain is the free use of a cell phone. It is my understanding that this value is equivalent to \$40 per month for nine months and \$50 for the three months that the monthly minute allowance is exceeded. This amounts to an annual value of \$510. The total annual value of these two benefits is \$1,174. It is assumed that these benefits rise over time at 3.0% per year, the same cost of living adjustment rate assumed for earnings. Column (6) of Earnings Tables 1 - 4 shows the projection of these benefits.

LOST PAST EARNINGS, INCLUDING CERTAIN BENEFITS

Mr. Tobin's lost past earnings including certain benefits for 2003 and 2004 are calculated in column (7) and are totaled at the bottom of Earnings Tables 1 - 4.

PRESENT VALUE OF LOST FUTURE EARNINGS

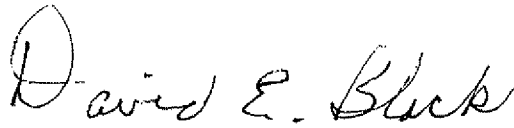
In order to determine the present value of Mr. Tobin's lost future earnings including certain benefits, the loss for each year in the future must be discounted at 5.5% per year to its 2005 value. The present (2005) value of each year's loss is shown in the column (7) of Earnings Tables 1 - 4 up to his retirement. The present values of lost future earnings including certain benefits from January 1, 2005 to the date of his retirement are totaled at the bottom of Earnings Tables 1 - 4.

LOST PENSION BENEFITS

The pension benefits of New Castle County police officers are based on the last 5 years of earnings and on years of service. Since Mr. Tobin's last five years of earnings will be lower than they would be if he had not been denied promotion, he suffers a reduction in pension benefits. Mr. Tobin's will have 30 years and 2.5 months of service at retirement. Since 1 to 2 months of service count as 1/4th of a year, Mr Tobin will have 30.25 years of service, and for officers with 30.25 years of service, the pension benefit is 75.63% (30.25 years X 2.5%) of the average final

In order to compute the tax on lump-sum payments received in 2005, the lump-sum is allocated across each tax bracket beginning with the remainder of the 25% bracket. Each lump sum not only fills the remainder of the 25% bracket, but also entirely fills the 28% and 33% brackets. The amount of each lump sum remaining is taxed at the top tax rate of 35%.

The compensation for the higher tax on each lump sum is the difference between these two tax calculations. The lump-sum tax compensation calculations are added to the present value of Total Lost Earnings and Pension at the bottom of Tables 1-4.



David E. Black, Ph.D.
Associate Professor, Economics
University of Delaware

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Earnings Table 1

PRESENT VALUE OF LOST EARNINGS AND CERTAIN BENEFITS**HENRY V. TOBIN III***Denied Promotions to Captain, May 12, 2003, and to Lt. Colonel, May 24, 2004*

YEAR (1)	AGE (2)	EARNINGS WITHOUT PROMOTION (3)	EARNINGS WITH PROMOTION (4)	ECONOMIC LOSSES [(4)-(3)] (5)	LOSS OF CERTAIN BENEFITS (6)	PRESENT VALUE OF LOSSES (7)
5/12/2003	49	\$51,032	\$53,447	\$2,415	\$703	\$3,118
2004	50	\$84,616	\$103,993	\$19,376	\$1,174	\$20,550
2005	51	\$87,155	\$120,494	\$33,339	\$1,209	\$34,548
2006	52	\$89,769	\$130,313	\$40,543	\$1,245	\$39,610
2007	53	\$92,463	\$140,934	\$48,472	\$1,283	\$44,702
2008	54	\$95,236	\$146,070	\$50,833	\$1,321	\$44,416
5/30/2009	55	<u>\$40,872</u>	<u>\$62,688</u>	<u>\$21,816</u>	<u>\$567</u>	<u>\$18,068</u>
TOTALS		\$541,143	\$751,839	\$216,796	\$7,503	
LOST PAST EARNINGS AND BENEFITS(2003-2004)						\$23,669
PRESENT VALUE OF LOST FUTURE EARNINGS AND BENEFITS						\$181,345
PRESENT VALUE OF LOST PENSION (Pension Table 1)						<u>\$333,992</u>
PRESENT VALUE OF LOST EARNINGS AND PENSION						\$539,005
COMPENSATION FOR HIGHER TAX ON LUMP-SUM PAYMENT						<u>\$35,660</u>
TOTAL LOSS						\$574,665

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Earnings Table 3

PRESENT VALUE OF LOST EARNINGS AND CERTAIN BENEFITS**HENRY V. TOBIN III***Denied Promotion to Captain, May 12, 2003,
and Denied Mid-Year Increase of Two Pay Grades, July 19, 2004*

YEAR	AGE	EARNINGS WITHOUT PROMOTION	EARNINGS WITH PROMOTION	LOSS OF EARNINGS [(4)-(3)]	LOSS OF CERTAIN BENEFITS	PRESENT VALUE OF LOSSES
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5/12/2003	49	\$51,032	\$53,447	\$2,415	\$703	\$3,118
2004	50	\$84,616	\$96,798	\$12,182	\$1,174	\$13,356
2005	51	\$87,155	\$110,264	\$23,109	\$1,209	\$24,318
2006	52	\$89,769	\$114,281	\$24,512	\$1,245	\$24,414
2007	53	\$92,463	\$117,710	\$25,247	\$1,283	\$23,836
2008	54	\$95,236	\$121,241	\$26,005	\$1,321	\$23,271
5/30/2009	55	<u>\$40,872</u>	<u>\$52,033</u>	<u>\$11,160</u>	<u>\$567</u>	<u>\$9,467</u>
TOTALS		\$541,143	\$655,773	\$124,630	\$7,503	
LOST PAST EARNINGS AND BENEFITS(2003-2004)						\$16,474
PRESENT VALUE OF LOST FUTURE EARNINGS AND BENEFITS						\$105,306
PRESENT VALUE OF LOST PENSION (Pension Table 3)						<u>\$189,637</u>
PRESENT VALUE OF LOST EARNINGS AND PENSION						\$311,417
COMPENSATION FOR HIGHER TAX ON LUMP-SUM PAYMENT						<u>\$19,530</u>
TOTAL LOSS						\$330,947

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Pension Table 1

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotions to Captain, May 12, 2003,
and to Lt. Colonel, May 24, 2004*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$18,203	\$14,694
2010	56	\$31,206	\$23,877
2011	57	\$31,206	\$22,632
2012	58	\$31,206	\$21,452
2013	59	\$31,206	\$20,334
2014	60	\$31,206	\$19,274
2015	61	\$31,206	\$18,269
2016	62	\$31,206	\$17,317
2017	63	\$31,206	\$16,414
2018	64	\$31,206	\$15,558
2019	65	\$31,206	\$14,747
2020	66	\$31,206	\$13,978
2021	67	\$31,206	\$13,249
2022	68	\$31,206	\$12,559
2023	69	\$31,206	\$11,904
2024	70	\$31,206	\$11,283
2025	71	\$31,206	\$10,695
2026	72	\$31,206	\$10,138
2027	73	\$31,206	\$9,609
2028	74	\$31,206	\$9,108
2029	75	\$31,206	\$8,633
2030	76	\$31,206	\$8,183
2031	77	\$31,206	\$7,757
2032	78	<u>\$9,882</u>	<u>\$2,328</u>
TOTAL		\$714,616	
PRESENT VALUE OF LOST PENSION			\$333,992

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Pension Table 3

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotion to Captain, May 12, 2003,
and Denied Mid-Year Increase of Two Pay Grades, July 19, 2004*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$10,336	\$8,343
2010	56	\$17,718	\$13,557
2011	57	\$17,718	\$12,850
2012	58	\$17,718	\$12,180
2013	59	\$17,718	\$11,545
2014	60	\$17,718	\$10,943
2015	61	\$17,718	\$10,373
2016	62	\$17,718	\$9,832
2017	63	\$17,718	\$9,320
2018	64	\$17,718	\$8,834
2019	65	\$17,718	\$8,373
2020	66	\$17,718	\$7,937
2021	67	\$17,718	\$7,523
2022	68	\$17,718	\$7,131
2023	69	\$17,718	\$6,759
2024	70	\$17,718	\$6,407
2025	71	\$17,718	\$6,073
2026	72	\$17,718	\$5,756
2027	73	\$17,718	\$5,456
2028	74	\$17,718	\$5,172
2029	75	\$17,718	\$4,902
2030	76	\$17,718	\$4,646
2031	77	\$17,718	\$4,404
2032	78	<u>\$5,611</u>	<u>\$1,322</u>
TOTAL		\$405,751	
PRESENT VALUE OF LOST PENSION			\$189,637

Prepared by David E. Black, Ph.D., Economist, University of Delaware

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

**DONALD E. CAVE, JR. and
JAMES W. BROWN, and
JOHN MANTAKOUNAS,**

Petitioners,

v.

**NEW CASTLE COUNTY COUNCIL,
Consisting of Christopher A. Coons,
J. Robert Woods, Robert S. Weiner,
William J. Tansey, Penrose Hollins,
Karen Venezky, Patty W. Powell;
CHURCHMANS CROSSING, LLC; and
LEON N. WEINER & ASSOCIATES,
INC.,**

Respondents.

C.A. NO. 02A-11-006-SCDP

NON-ARBITRATION CASE

**RESPONDENT NEW CASTLE COUNTY COUNCIL'S
REVISED ANSWERING BRIEF**

Mary A. Jacobson (#3508)
New Castle County Law Department
87 Reads Way
New Castle, DE 19720
(302) 395-5144
Attorney for New Castle County Council

Dated: April 15, 2004

STATEMENT OF FACTS

Churchmans Meadows is a 33.16 +/- acre affordable housing development site located in the White Clay Hundred section of New Castle County. Churchmans Meadows is bordered partly to the southwest by a property known as the Christiana Town Center. The two properties are part of a transportation study called the Churchmans Crossing Study ("Study"). The Study depicts a bypass traversing the properties and connecting State Route 7 to State Route 273 known as the Churchmans Bypass ("Bypass"). The Bypass was put on the study by the property owners, without any analysis, as a conceptual idea that was intended to be constructed by the property owners. CCM-11¹. DelDOT never agreed to make the Bypass a committed right-of-way. *Id.*

Leon N. Weiner and Associates, Inc. ("Weiner") took the Plan through the New Castle County Land Subdivision Regulations known as the Unified Development Code ("UDC"). As required by the UDC, the preliminary plan was reviewed by the Technical Advisory Committee ("TAC") for compliance with County and State law. On November 6, 2001, a meeting of the New Castle County Planning Board ("Planning Board") was scheduled to review the TAC comments. Notice of the Planning Board meeting was advertised in the News Journal. Exhibit A. Notice of the Planning Board meeting was also sent to all property owners within a three hundred foot radius of Churchmans Meadows. Exhibit B. In addition, Weiner posted notice of the Planning Board hearing on a sign located on the Churchmans Meadows property. Exhibit C. In August of 2002, Weiner was successful in satisfying all of the requirements of the UDC and obtained approval from the New Castle County Land Use Department ("Department") pursuant to section 40.31.114(B) of the UDC. The Plan was then scheduled for the September 2, 2002

¹ Citations to the meeting of the New Castle County Council on September 10, 2002 are denoted by a "CCM-" followed by a page number.

County developed the private interest, the owners of those pieced of land, would have to contribute to both the right-of-way and the capital necessary to build those connector roads to wherever they might land.” CCM-11.

When the Plan was submitted for review, DelDOT and Weiner met and discussed the appropriate alignment of Bypass that satisfied the need for local circulation in the area and the property owners need to develop the site. CCM-11. In the end, the alignment in the Plan was determined to be sufficient to carry traffic across Churchmans Meadows and connect intelligently with the adjoining property of the Christiana Town Center. CCM-12. The Department agreed with location of the Bypass on the Plan and determined that the Plan and the Bypass met all of the requirements of the UDC.

Council, after deliberation and discussion, consented to the approval of the Plan by a vote of 5 “yes”, 1 “no”, and 1 “abstained”. CCM-30, 31. The plans was recorded in the Recorder of Deeds for New Castle County on September 1, 2003.

ARGUMENT

I. COUNCIL'S DECISION TO CONSENT TO THE APPROVAL OF THE PLAN SHOULD NOT BE REVERSED.

A. Council's decision to consent to the approval of the Plan should only be reversed if the Court determines that Council did not properly follow the record plan submission requirements.

Assuming *arguendo* that the Court finds Petitioners possess standing to invoke its jurisdiction and the matter should be dismissed for Petitioners failure to join an indispensable party, upon review, the Court must determine whether there were "some kind of procedural irregularities that allows [it] to say that [Council has] violated the provisions of UDC or state law, or that requires this Court in some way to substitute its judgment for that of [Council]." *Concord Towers, Inc.*, 1997 WL 525860 *4. "The word 'irregularity' should be used in the specific context of a failure to follow procedures." *Id.*

Procedurally, the record plan submission requirements provide that once a plan is approved by the Department, it is referred to Council for its consent and recordation. Council must then schedule the plan for its next scheduled meeting. UDC § 40.31.114.³ At the public meeting, Council may either adopt the resolution consenting to the recordation of the plan or table the matter, no more than twice, and refer it back to the Department with questions relating to the plan's technical compliance with the law. UDC § 40.31.114(C)(1)(a) and (b). Upon final consent to the plan, the plan must be recorded in the Office of the Recorder of Deeds. UDC § 40.31.114(E).

In August of 2002, the Plan was referred to Council by the Department with a statement that the Plan met all of requirements of the UDC. The Plan was then scheduled for the next meeting of County Council on September 10, 2002. Prior to the County Council meeting, a meeting of the

³ Citations to provisions of the UDC in this Brief may be found in the Compendium of Unreported Opinions and UDC provisions which was filed on April 29, 2003.

are adopted by resolution. *UDC* § 40.31.114(C). A resolution is simply an expression of the opinion or will of a body that does not have the force of effect of law. *Black's Law Dictionary*, 6th Ed. Resolutions are used to regulate administrative or ministerial matters that are temporary in nature. *Freedman v. Longo*, 1994 WL 469159 *3 (Del.Ch.). The Delaware Supreme Court has similarly approved action by resolution, rather than ordinance, where the governing body merely consents to the proposed action of another body. *Id.*; citing *Piekarski v. Smith*, 153 A.2d 587, 591 (Del. 1959). Council's consent to approval of the Plan is clearly ministerial in nature. *Rappa v. Buck*, 275 A.2d 795 (Del. Super. 1971); *Acierno v. Folsom*, 337 A.2d 309, 313 (Del. 1975). Therefore, the Court's review is limited to a determination of whether procedural irregularities occurred.

B. Even reviewed under the substantial evidence standard, Council's actions were appropriate.

Even under a substantial evidence analysis the acts of Council must be upheld. Substantial evidence is that evidence from which an agency fairly and reasonably could reach the conclusion it did. It is more than a scintilla but less than a preponderance. *Mellow v. Board of Adjustment*, 565 A.2d 947, 954 (Del. Super. 1988), 567 A.2d 422 (Del. 1989). If the decision is supported by substantial evidence, the Court must sustain the decision of the governmental body, even though it would have decided otherwise had it come before it in the first instance. *Id.* The Court will not disturb a decision simply because a different view of the same evidence could be taken given the totality of the circumstances surrounding the application. *Council of Civic Associations of Brandywine Hundred v. Board of Adjustment*, 682 A.2d 675 (Del. 1996). The Court merely determines if the evidence is legally adequate to support the findings; it does not sit as a trier of fact with authority to weigh evidence, determine questions of credibility, and make its own factual findings and conclusions. *Petrucelli v. Board of Adjustment*, 1998 WL 283381 (Del. Super.).

As stated *supra*, the road connecting these two properties was never intended to serve as a committed right-of-way in the Study. CCM-11. Rather, it was intended to indicate a developer proposed roadway. *Id.* Moreover, just because Mr. Acierno placed the location of the Bypass in a particular location on his plan that uniquely serves his parcel without regard to those around him, does not create a local circulation plan. The only relevant reference to this road is that it will some way connect Route 273 to Route 7. The Study does not identify the location with certainty. The location of a road can vary to a large degree based upon the zoning, topography, and alignment information that is provided to DelDOT prior to construction of the road. *UDC* § 40.21.111. In addition, there was never any commitment by DelDOT that the roads connecting these properties would be located in the place indicated by the Christiana Town Center plan. In fact, Secretary Hayward stated that the owners of these two properties never expected to have a particular alignment. CCM-11. This statement is supported by the lack of any studies or analysis conducted to determine the feasibility of the road location in the place depicted on the Christiana Town Center plan. To the contrary, Secretary Hayward stated that negotiations, surveys, and analysis had been conducted on the current location of the road on the Plan and determined that this location is both appropriate and feasible. CCM-11,12.

Petitioners further contend that the location of the road does not work in a manner that is equal or paramount to the alignment in the Study. DelDOT thoroughly reviewed the plan and determined that it is consistent with the Study. LUC-13. The General Manager of the Department, Charles Baker, echoed this sentiment by stating that “the correspondence and analysis that DelDOT went through, they came to the conclusion that the function of the alignment of the road connecting the properties” depicted on the Plan functioned effectively. LUC- 34. In addition, DelDOT has investigated the feasibility of crossing the wetlands and has determined that it is possible with a

Council's approval would be the property owners, Respondents Churchmans Crossing LLC and Leon N. Weiner & Associates, Inc.

Although Petitioners were not entitled to procedural due process in connection with Council's consent to approve the Plan, significant notice and opportunity were provided to all interested parties. Upon the scheduling of the Plan for review before the Planning Board to address the technical advisory committee comments, the Department advertised the applications in the legal notice section of the Saturday issue of *the News Journal* fourteen calendar days prior to the public hearing date. Exhibit A. The Department also sent a copy of the legal notice of the Planning Board Hearing to the last known address of all property owners within a three hundred feet radius of the property at issue or twelve different property owners, whichever is greater, within ten calendar days prior to the Planning Board Hearing.⁴ Exhibit B. In addition, Weiner posted a notice of the Planning Board Hearing on the property in a conspicuous location, at an appropriate size, so that all interested parties would be advised of the hearing. Exhibit C. Furthermore, all such notices indicate that the files for these particular plans are available in the offices of the Department for review.

Similarly, Council advertised the Land Use Committee meeting, both in the *News Journal* and outside the chambers of council as required by the Delaware Freedom of Information Act. Exhibit D and E. The meeting of County Council at which the Plan was adopted was also dully notice in the *News Journal* the Saturday preceding the meeting. Exhibit F.

⁴ It should be noted that if Petitioner Cave are any relationship to the trustees of the estate of Pearl M. Cave they received notice of the New Castle County Planning Board hearing. Exhibit B.

CONCLUSION

It is clear that Council's actions were in conformance with the land subdivision regulations of the UDC and supported by substantial evidence. Therefore, Council's action must be upheld and the matter before the Court dismissed. Finally, despite Petitioners lack of entitlement to due process of the law, sufficient notice and opportunity was given to review and comment on the Plan prior to its adoption. Thus, this claim also must be dismissed.

NEW CASTLE COUNTY LAW DEPARTMENT

Mary A. Jacobson (#3508)
First Assistant County Attorney
New Castle County Government Center
87 Reads Way
New Castle, DE 19720
Attorney for Respondent New Castle County Council

Dated: April 15, 2004

EXHIBIT

2

OF

JOHN M. LAROSA

TWO EAST 7TH STREET, SUITE 302
WILMINGTON, DELAWARE 19801-3707

PHONE: (302) 888-1290

FAX: (302) 655-9329

LICENSED IN DE, PA, AND NJ

INTERNET: WWW.LAROSALAW.COM

October 3, 2006

PERSONAL AND CONFIDENTIAL

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregg E. Wilson, Esquire
County Attorney
New Castle County Law Department
87 Reads Way
New Castle, DE 19720-1648

CONFIDENTIAL

RE: Tobin v. Gordon, et al. C.A. No. 04-1211 KAJ

Dear Gregg:

I am an attorney representing Lieutenant Henry V. Tobin III in the above captioned federal lawsuit. While my co-counsel, Thomas Neuberger, tends to other matters, I am handling this case. So I believe continued settlement discussions at the outset of the litigation are appropriate. This letter is subject to the normal protections of Federal Rule of Evidence 408. Nothing contained herein shall be deemed to be an admission against my client's interest. This letter is sent in the course of settlement discussions.

Resuming negotiations at the outset of the litigation is in the best interest of all parties.

My client's case essentially is about the economic impact of being denied promotion to Captain,¹

¹ There are several components of damages in this case including emotional distress, injury to reputation, humiliation and embarrassment, and punitive damages. However, recognizing that juries respond primarily to economic losses, only wage and pension losses and attorneys' fees will be discussed. The value of the wage, pension, and other economic losses in

Gregg E. Wilson, Esquire
County Attorney
October 3, 2006
Page 2

and he recently felt vindicated when the former interim Colonel and current Lieutenant Colonel Scott McClaren admitted that he deserved to be promoted to Captain a long time ago. With the passage of time, my client also has been able to distance himself from the hurt of being passed over for promotion, and he now fully realizes that the adverse employment actions were not due to any fault of his own. Thus, he would like to settle the case and move on with his life.

Also, my client has learned that another Captain position soon will become vacant, and he plans to apply for it. He excelled at the testing in the past, and now with the old administration no longer affecting his chances, we expect that he will have a fair shot to earn such a promotion which would partially mitigate his damages. So I believe that now is an appropriate time to make a renewed settlement demand.

CONFIDENTIAL

I also believe that continued settlement discussions at the outset of the litigation are in the County's best interest for several reasons. First, at this early stage, Defendants' attorneys' fees have not yet escalated as they have in other County employment cases. For instance, I understand that in one case alone, Reyes v. Freebery, C.A. No. 02-1283 SLR, the County's legal fees for outside counsel just through discovery exceeded \$650,000. Secondly, there is reduced exposure here because Plaintiff's attorneys' fees are only a fraction of what they will be if the

the case ranges from \$275,000; to \$331,000; to \$361,000; to \$574,000. The latter two figures are for lost promotion opportunities beyond captain. Lieutenant Tobin's pension loss is as high as \$333,992, as explained by our forensic economist, David E. Black, Ph.D. See Ex. A. So our client's economic loss is as high as \$574,000. The other exposure for which there should be compensation is our client's attorneys' fees and expenses which to date approximates \$35,000. So Defendants' exposure for economic losses and plaintiff's attorneys' fees to date ranges between \$310,000 and \$609,000.

Gregg E. Wilson, Esquire
County Attorney
October 3, 2006
Page 3

case is litigated through trial. Thus, an early resolution here undoubtedly will save the County taxpayers hundreds of thousands of dollars in legal fees.

Finally, this proposal is being made as to all defendant in this case, including the former county executive and chief administrative officer. So the entire case will end.

Resuming settlement discussions at the outset of the litigation is in the best interest of all parties. I am serious about settlement, and I remain optimistic that we can ultimately settle the case for a figure acceptable to all involved. For now, my client has authorized me to move from his previous \$1.5 million demand and make a new settlement offer of \$600,000.

I believe the proposal speaks for itself. Nevertheless, please contact me if you have any questions about this offer. The offer expires thirty (30) calendar days from the date of this letter.

I look forward to hearing your response to this proposal.

Respectfully submitted,

CONFIDENTIAL

John M. LaRosa

Enclosures

cc: Thomas S. Neuberger, Esquire
Lieutenant Henry V. Tobin III

**CALCULATION OF THE PRESENT VALUE OF THE ECONOMIC LOSS
FROM LOST EARNINGS AND PENSION
DUE TO RETALIATORY DENIALS OF PROMOTION**

CONFIDENTIAL
HENRY V. TOBIN III

Prepared by

David E. Black, Ph.D.

Economist

January 20, 2005

Henry V. Tobin III is a Senior Lieutenant in the New Castle County Police Department where he has been employed since February 19, 1979. He was denied promotion to Captain on May 12, 2003. Because he was denied this promotion, several other promotion opportunities were denied him. On July 19, 2004, two Captains were each given increases of two grades. One of these Captains was the Lieutenant who was promoted over Mr. Tobin on May 12, 2003. In addition, on May 24, 2004, there were promotion opportunities from Captain to Major and also to Lt. Colonel. It is Mr. Tobin's contention that these denied promotions were due to his exercise of his First Amendment free speech rights in reporting wrongdoing to federal authorities.

This report estimates the economic loss which results from Mr. Tobin's loss of the additional earnings including certain additional benefits and pension benefits which he would have had with promotion to Captain and with subsequent promotions. Losses are calculated for four denied promotion scenarios:

Denied Promotions to Captain, May 12, 2003
and to Lt. Colonel, May 24, 2004

Denied Promotions to Captain, May 12, 2003
and to Major, May 24, 2004

Denied Promotion to Captain, May 12, 2003
and denied mid-year increase of two pay grades, July 19, 2004

Denied Promotion to Captain, May 12, 2003

Lost earnings are calculated from the various dates of promotion. It is assumed that Mr. Tobin will retire at age 55, the mandatory retirement age. Mr. Tobin is now 50.1 years old, and his life expectancy is 77.5 years. (U.S. Department of Health and Human Services, National Vital Statistics Reports, 1996, United States Abridged Life Tables) The present value of lost future earnings including certain benefits and pension benefits are computed as of 2005 by applying a 5.5% rate of discount to future losses. This report also calculates the compensation for the higher tax that will be imposed on the lump-sum compensation for the total loss.

The following presents the assumptions and calculations involved in determining the present value of Mr. Tobin's lost earnings including certain benefits and pension benefits.

Summary of Results, Present Values of Losses:

<u>Promotion</u>	<u>Lost Past Earnings Including Benefits</u>	<u>Lost Future Earnings Including Benefits</u>	<u>Lost Pension</u>	<u>Total Lost Earnings Plus Pension</u>	<u>Total Loss Including Compensation For Higher Tax On Lump-Sum Payment</u>
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Captain (5/12/2003) and then Lt. Colonel (5/24/2004) (Earnings Table 1 and Pension Table 1)	\$23,669	\$181,345	\$333,992	\$539,005	\$574,665
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Captain (5/12/2003) and then Major (5/24/2004) (Earnings Table 2 and Pension Table 2)	\$13,631	\$116,341	\$209,687	\$339,659	\$361,265
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Captain (5/12/2003) and then two pay grades at Captain (7/19/2004) (Earnings Table 3 and Pension Table 3)	\$16,474	\$105,306	\$189,637	\$311,417	\$330,947
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Captain (5/12/2003) (Earnings Table 4 and Pension Table 4)	\$12,150	\$88,597	\$157,868	\$258,616	\$274,026
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EARNINGS WITHOUT PROMOTION

Mr. Tobin's earnings without promotion are projected in column (3) of Earnings Tables 1 - 4 from the date at which his promotion to Captain is denied on May 12, 2003 to age 55 which is the mandatory retirement age for police officers in New Castle County. At the time he was denied this promotion, Mr. Tobin was earning at a Senior Lieutenant's grade, step 10. (Pay Plan and Rates of Pay for FOP Lodge No. 5, effective April 1, 2004, P001. The rate for 2003 is derived based on a 3.0% cost of living increase.) It is assumed that Mr. Tobin remains at this pay grade and step until his retirement at age 55. Cost of living raises of 3.0% are added annually on April 1.

EARNINGS WITH PROMOTION

Earnings with promotion are projected in column (4) of Earnings Tables 1 - 4 from the date at which Mr. Tobin's promotion to Captain was denied. In Earnings Table 4, it is assumed that Mr. Tobin is only denied a promotion to Captain. Earnings are projected starting with Captain's grade, pay step 2. (Pay step 2 is used because it is the lowest pay step which pays an hourly rate which is higher than what Mr. Tobin was earning as a Senior Lieutenant.) Pay progressions to higher pay steps are assumed to occur on Mr. Tobin's anniversary date, and cost of living increases of 3.0% are assumed to occur on April 1 of each year. (Pay Plan and Rates of Pay for Non-Union Classified Police Executive Staff, effective April 1, 2004, P002)

In column (4) of Earnings Table 3, it is assumed that Mr. Tobin is denied mid-year increases of two pay grades on July 19, 2004. It is my understanding that pay increases are normally given on an individual's anniversary date, however on July 19, 2004, two Captains each received two pay grade increases. One of these Captains was the Lieutenant who was promoted over Mr. Tobin on May 12, 2003. Beyond July 19, 2004, earnings are projected for this pay grade in the same way as described for Earnings Table 4 above. (Pay Plan and Rates of Pay for Non-Union Classified Police Executive Staff, effective April 1, 2004, P002)

In column (4) of Earnings Table 2, it is assumed that if Mr. Tobin had been promoted to Captain on May 12, 2003, he would have been promoted to Major on May 24, 2004 at the lowest pay step. Beyond May 24, 2004, earnings are projected for this pay grade in the same way as described for Earnings Table 4 above. (Pay Plan and Rates of Pay for Non-Union Classified Police Executive Staff, effective April 1, 2004, P002)

In column (4) of Earnings Table 1, it is assumed that if Mr. Tobin had been promoted to Captain on May 12, 2003, he would have been promoted to Lieutenant Colonel on May 24, 2004 at the lowest pay step. Beyond May 24, 2004, earnings are projected for this pay grade in the same way as described for Earnings Table 4 above. (Pay Plan and Rates of Pay for Non-Union Classified Police Executive Staff, effective April 1, 2004, P002)

LOSS OF EARNINGS

Mr. Tobin's loss of earnings in each year is shown in column (5) of Earnings Tables 1 - 4 as the difference between what he would have earned if he had he been promoted [column(4)] and what he will earn without being promoted [column (3)].

LOSS OF CERTAIN BENEFITS

There are two additional benefits that Mr. Tobin would get with promotion to Captain and above. Instead of shift differential pay being rewarded on an hourly basis, as it is for Senior Lieutenants, Captains and above receive a stipend for working shifts. In 2004 the difference between the total annual stipend and his annualized shift differential pay is \$664. (\$735 in total annual shift stipends as a Captain minus \$71 in shift differential earnings as a Senior Lieutenant) The second benefit that Mr. Tobin would receive as a Captain is the free use of a cell phone. It is my understanding that this value is equivalent to \$40 per month for nine months and \$50 for the three months that the monthly minute allowance is exceeded. This amounts to an annual value of \$510. The total annual value of these two benefits is \$1,174. It is assumed that these benefits rise over time at 3.0% per year, the same cost of living adjustment rate assumed for earnings. Column (6) of Earnings Tables 1 - 4 shows the projection of these benefits.

LOST PAST EARNINGS, INCLUDING CERTAIN BENEFITS

Mr. Tobin's lost past earnings including certain benefits for 2003 and 2004 are calculated in column (7) and are totaled at the bottom of Earnings Tables 1 - 4.

PRESENT VALUE OF LOST FUTURE EARNINGS

In order to determine the present value of Mr. Tobin's lost future earnings including certain benefits, the loss for each year in the future must be discounted at 5.5% per year to its 2005 value. The present (2005) value of each year's loss is shown in the column (7) of Earnings Tables 1 - 4 up to his retirement. The present values of lost future earnings including certain benefits from January 1, 2005 to the date of his retirement are totaled at the bottom of Earnings Tables 1 - 4.

LOST PENSION BENEFITS

The pension benefits of New Castle County police officers are based on the last 5 years of earnings and on years of service. Since Mr. Tobin's last five years of earnings will be lower than they would be if he had not been denied promotion, he suffers a reduction in pension benefits. Mr. Tobin's will have 30 years and 2.5 months of service at retirement. Since 1 to 2 months of service count as 1/4th of a year, Mr Tobin will have 30.25 years of service, and for officers with 30.25 years of service, the pension benefit is 75.63% (30.25 years X 2.5%) of the average final

five years of earnings.

For Mr. Tobin, the difference in average earnings over the last 5 years is computed using column (5) in Earnings Tables 1 - 4. Column (3) of Pension Tables 1 - 4 shows 75.63% of this difference [column (5)] for every year after his retirement up to the end of his life expectancy. Present values are calculated in column (4) of Pension Tables 1 - 4. The sum of these present values is the total present value of his lost pension benefits which is shown at the bottom of Pension Tables 1 - 4.

COMPENSATION FOR HIGHER TAX ON LUMP-SUM PAYMENT

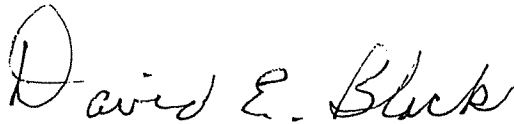
Because the Federal Income Tax is a graduated tax, a lump-sum payment covering the present value of Mr. Tobin's lost earnings and pension will be taxed at a higher federal rate than the lost earnings and pension would have been taxed if these earnings and pension are paid in the years in which they should have been or should be paid. (It is assumed that payroll taxes on a lump-sum payment will be the same as on annual payments. The State of Delaware income tax rate is constant in the range of taxable income that applies in this case and therefore would also be the same for a lump-sum payment as for annual payments.)

Part of Mr. Tobin's loss is not taxable. Because his loss of certain benefits [column (6) in Tables 1 - 4] is not subject to taxation, this part of his loss must be excluded from consideration in the calculation of compensation for the higher tax on his lump-sum payment. In order to compute Mr. Tobin's taxable loss, the present value of lost earnings and pension is recalculated in Tables 1 - 4 by subtracting the present value of certain benefits, \$7,003. The resulting present value of taxable lost of earnings and pension for Tables 1 - 4 are respectively \$532,003, \$332,656, \$304,414, and \$251,613.

The higher Federal Income Taxation of a lump-sum payment made to Mr. Tobin is calculated by computing the present value of the taxes that would be imposed on lost annual payments of earnings and pension and subtracting this from the 2005 taxes that would be imposed on the lump-sum present value of these payments. The Tobin's estimated 2005 taxable income, \$109,494, places them in the 25% marginal tax bracket, i.e., their last dollars of taxable income are taxed at a 25% rate. If Mr Tobin's lost 2005 earnings are added to his estimated taxable income, \$10,456 of his 2005 loss would be taxed at 25% and the remainder would fall into the next marginal bracket and be taxed at 28%. For each loss scenario, his annual losses in some years would be taxed at both 25% and 28% as in 2005, but his annual losses in other years would be taxed entirely at 25%. In order to compute the present value of the taxes on all his annual payments, the total present value of earnings and pension which would be subject to a 25% tax rate was calculated. Subtracting this amount from the relevant lump-sum amount leaves the present value of income and pension taxed at 28%. Applying the appropriate tax rates to each of these present values and adding the results together, yields the present value of the taxes on his annual payments. This method of calculation assumes that the Tobin's 2003 tax status remains the same over time.

In order to compute the tax on lump-sum payments received in 2005, the lump-sum is allocated across each tax bracket beginning with the remainder of the 25% bracket. Each lump sum not only fills the remainder of the 25% bracket, but also entirely fills the 28% and 33% brackets. The amount of each lump sum remaining is taxed at the top tax rate of 35%.

The compensation for the higher tax on each lump sum is the difference between these two tax calculations. The lump-sum tax compensation calculations are added to the present value of Total Lost Earnings and Pension at the bottom of Tables 1-4.



David E. Black, Ph.D.
Associate Professor, Economics
University of Delaware

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List of Documents Reviewed for this Report

1. The Pay grades for his (Mr. Tobin's) current rank (Sr. Lieutenant), the rank he was denied (Police Captain), and other ranks (P1-3).
2. Description of Supplemental Staff Benefits for the ranks of Captain and higher (P4).
3. A summary of his 2004 year-to-date earnings and benefits (P5).
4. His W-2's from Defendant New Castle County from 1994-2003 (P6-15).
5. Amendment to New Castle County Code regarding pensions. (P16-37).
6. New Castle County Code Chapter 11A entitled "Pensions." (P38-149).
7. New Castle County Employee's Pension Program. (P150-162).
8. U.S. Department of Health and Human Services, National Vital Statistics Reports, 1996, United States Abridged Life Tables.

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HENRY V. TOBIN III

Denied Promotions to Captain, May 12, 2003, and to Lt. Colonel, May 24, 2004

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Earnings Table 2

PRESENT VALUE OF LOST EARNINGS AND CERTAIN BENEFITS**HENRY V. TOBIN III***Denied Promotions to Captain, May 12, 2003, and to Major, May 24, 2004*

YEAR	AGE	EARNINGS WITHOUT PROMOTION	EARNINGS WITH PROMOTION	ECONOMIC LOSSES [(4)-(3)]	LOSS OF CERTAIN BENEFITS	PRESENT VALUE OF LOSSES
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5/12/2003	49	\$51,032	\$53,447	\$2,415	\$703	\$3,118
2004	50	\$84,616	\$93,955	\$9,339	\$1,174	\$10,513
2005	51	\$87,155	\$104,511	\$17,356	\$1,209	\$18,565
2006	52	\$89,769	\$113,317	\$23,548	\$1,245	\$23,501
2007	53	\$92,463	\$122,553	\$30,091	\$1,283	\$28,187
2008	54	\$95,236	\$132,541	\$37,305	\$1,321	\$32,894
5/30/2009	55	\$40,872	\$56,650	\$15,778	\$567	\$13,194
TOTALS		\$541,143	\$676,974	\$135,830	\$7,503	\$13,631
LOST PAST EARNINGS AND BENEFITS(2003-2004)						
PRESENT VALUE OF LOST FUTURE EARNINGS AND BENEFITS						
PRESENT VALUE OF LOST PENSION (Pension Table 2)						
PRESENT VALUE OF LOST EARNINGS AND PENSION						
COMPENSATION FOR HIGHER TAX ON						
LUMP-SUM PAYMENT						
TOTAL LOSS						
						\$361,265

Prepared by David E. Black, Ph.D., Economist, University of Delaware

PRESENT VALUE OF LOST EARNINGS AND CERTAIN BENEFITS

HENRY V. TOBIN III

Denied Promotion to Captain, May 12, 2003,
and Denied Mid-Year Increase of Two Pay Grades, July 19, 2004

YEAR	AGE	EARNINGS WITHOUT PROMOTION	EARNINGS WITH PROMOTION	LOSS OF EARNINGS [(4)-(3)]	LOSS OF CERTAIN BENEFITS	PRESENT VALUE OF LOSSES
(1)	(2)	(3)	(4)	(5)	(6)	(7)
5/12/2003	49	\$51,032	\$53,447	\$2,415	\$703	\$3,118
2004	50	\$84,616	\$96,798	\$12,182	\$1,174	\$13,356
2005	51	\$87,153	\$110,264	\$23,109	\$1,209	\$24,318
2006	52	\$89,763	\$114,281	\$24,512	\$1,245	\$24,414
2007	53	\$92,463	\$117,710	\$25,247	\$1,283	\$23,836
2008	54	\$95,236	\$121,241	\$26,005	\$1,321	\$23,271
5/30/2009	55	\$40,872	\$52,033	\$11,160	\$567	\$9,467
TOTALS		\$541,143	\$665,773	\$124,630	\$7,503	
LOST PAST EARNINGS AND BENEFITS(2003-2004)						
PRESENT VALUE OF LOST FUTURE EARNINGS AND BENEFITS						\$16,474
PRESENT VALUE OF LOST PENSION (Pension Table 3)						\$105,306
PRESENT VALUE OF LOST EARNINGS AND PENSION						\$189,637
COMPENSATION FOR HIGHER TAX ON LUMP-SUM PAYMENT						\$311,417
TOTAL LOSS						\$19,530
						\$330,947

Pension Table 1

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotions to Captain, May 12, 2003,
and to Lt. Colonel, May 24, 2004*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$18,203	\$14,694
2010	56	\$31,206	\$23,877
2011	57	\$31,206	\$22,632
2012	58	\$31,206	\$21,452
2013	59	\$31,206	\$20,334
2014	60	\$31,206	\$19,274
2015	61	\$31,206	\$18,269
2016	62	\$31,206	\$17,317
2017	63	\$31,206	\$16,414
2018	64	\$31,206	\$15,558
2019	65	\$31,206	\$14,747
2020	66	\$31,206	\$13,978
2021	67	\$31,206	\$13,249
2022	68	\$31,206	\$12,559
2023	69	\$31,206	\$11,904
2024	70	\$31,206	\$11,283
2025	71	\$31,206	\$10,695
2026	72	\$31,206	\$10,138
2027	73	\$31,206	\$9,609
2028	74	\$31,206	\$9,108
2029	75	\$31,206	\$8,633
2030	76	\$31,206	\$8,183
2031	77	\$31,206	\$7,757
2032	78	<u>\$9,882</u>	<u>\$2,328</u>
TOTAL		\$714,616	
PRESENT VALUE OF LOST PENSION			\$333,992

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Pension Table 2

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotions to Captain, May 12, 2003, and to Major, May 24, 2004*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$11,429	\$9,225
2010	56	\$19,592	\$14,990
2011	57	\$19,592	\$14,209
2012	58	\$19,592	\$13,468
2013	59	\$19,592	\$12,766
2014	60	\$19,592	\$12,100
2015	61	\$19,592	\$11,470
2016	62	\$19,592	\$10,872
2017	63	\$19,592	\$10,305
2018	64	\$19,592	\$9,768
2019	65	\$19,592	\$9,258
2020	66	\$19,592	\$8,776
2021	67	\$19,592	\$8,318
2022	68	\$19,592	\$7,885
2023	69	\$19,592	\$7,474
2024	70	\$19,592	\$7,084
2025	71	\$19,592	\$6,715
2026	72	\$19,592	\$6,365
2027	73	\$19,592	\$6,033
2028	74	\$19,592	\$5,718
2029	75	\$19,592	\$5,420
2030	76	\$19,592	\$5,138
2031	77	\$19,592	\$4,870
2032	78	\$6,204	\$1,462
TOTAL		\$448,652	
PRESENT VALUE OF LOST PENSION			\$209,687

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Pension Table 3

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotion to Captain, May 12, 2003,
and Denied Mid-Year Increase of Two Pay Grades, July 19, 2004*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$10,336	\$8,343
2010	56	\$17,718	\$13,557
2011	57	\$17,718	\$12,850
2012	58	\$17,718	\$12,180
2013	59	\$17,718	\$11,545
2014	60	\$17,718	\$10,943
2015	61	\$17,718	\$10,373
2016	62	\$17,718	\$9,832
2017	63	\$17,718	\$9,320
2018	64	\$17,718	\$8,834
2019	65	\$17,718	\$8,373
2020	66	\$17,718	\$7,937
2021	67	\$17,718	\$7,523
2022	68	\$17,718	\$7,131
2023	69	\$17,718	\$6,759
2024	70	\$17,718	\$6,407
2025	71	\$17,718	\$6,073
2026	72	\$17,718	\$5,756
2027	73	\$17,718	\$5,456
2028	74	\$17,718	\$5,172
2029	75	\$17,718	\$4,902
2030	76	\$17,718	\$4,646
2031	77	\$17,718	\$4,404
2032	78	<u>\$5,611</u>	<u>\$1,322</u>
TOTAL		\$405,751	
PRESENT VALUE OF LOST PENSION			\$189,637

Prepared by David E. Black, Ph.D., Economist, University of Delaware

Pension Table 4

PRESENT VALUE OF LOST PENSION BENEFITS**HENRY V. TOBIN III***Denied Promotion to Captain, May 12, 2003*

YEAR (1)	AGE (2)	PENSION BENEFIT DIFFERENCE (3)	PRESENT VALUE OF LOSSES (4)
6/1/2009	55	\$8,604	\$6,945
2010	56	\$14,750	\$11,286
2011	57	\$14,750	\$10,697
2012	58	\$14,750	\$10,140
2013	59	\$14,750	\$9,611
2014	60	\$14,750	\$9,110
2015	61	\$14,750	\$8,635
2016	62	\$14,750	\$8,185
2017	63	\$14,750	\$7,758
2018	64	\$14,750	\$7,354
2019	65	\$14,750	\$6,970
2020	66	\$14,750	\$6,607
2021	67	\$14,750	\$6,263
2022	68	\$14,750	\$5,936
2023	69	\$14,750	\$5,627
2024	70	\$14,750	\$5,333
2025	71	\$14,750	\$5,055
2026	72	\$14,750	\$4,792
2027	73	\$14,750	\$4,542
2028	74	\$14,750	\$4,305
2029	75	\$14,750	\$4,081
2030	76	\$14,750	\$3,868
2031	77	\$14,750	\$3,666
2032	78	<u>\$4,671</u>	<u>\$1,100</u>
TOTAL		\$337,777	
PRESENT VALUE OF LOST PENSION			\$157,868

Prepared by David E. Black, Ph.D., Economist, University of Delaware

EXHIBIT

3

	ATTY	Date	Description	Time	2
1	JML	07/08/03	Initial consultation with client	1.4	
2	TSN	07/29/03	Meeting with JLR to discuss his possible case and the facts.	0.5	
3	JML	07/30/03	Meeting with TSN regarding facts from initial consultation	0.5	
4	JML	07/31/03	2d Meeting with TSN re: facts and documents needed to establish claim of 1st Amendment retaliation	0.5	
5	JML	08/06/03	Telephone to client regarding promotion procedures and illegal reasons for his denied promotion	0.2	
6	TSN	08/18/03	Meet with JLR to discuss the facts for a retaliation claim.	0.3	
7	JML	09/25/03	3d Meeting with TSN regarding First Amendment retaliation and other potential claims	0.4	
8	JML	10/10/03	Review deposition of Colonel Cunningham regarding promotions in NCC PD	0.3	
9	JML	10/10/03	Memo to TSN regarding Cunningham deposition testimony regarding NCC PD promotions	0.8	0.8
10	TSN	10/15/03	Review fact memo from JLR.	0.1	0.1
11	SJN	10/21/03	Conference with TSN, JLR, MDH to discuss conflict issues.	0.5	
12	TSN	10/21/03	Meet with JLR, MH, SJN about conflict of interest issues and the representation.	0.5	
13	JML	10/22/03	Review file and prepare for today's meeting with TSN	0.4	
14	TSN	11/10/03	Meet with JLR about the case.	0.1	
15	TSN	12/09/03	Meet with JLR to discuss the timing of the case.	0.1	
16	JML	12/19/03	Telephone from client regarding newest promotions	0.3	
17	JML	02/04/04	Telephone from client regarding new job postings and denial of 2 additional promotions	0.2	
18	JML	02/04/04	Memo to TSN regarding today's telephone call from client	0.5	0.5
19	JML	02/25/04	Telephone to client regarding other County officers	0.1	
20	JML	03/08/04	Telephone from client regarding documents for him to sign at today's meeting	0.1	

Both Films by Date

3	4	5	6	7	8	9	10	11	12	13	14	15	16
1.4													
0.2													
	0.3												
0.3													
0.3													
0.1													
0.1													

Both Filings by Date

	ATTY	Date	Description	Time	2
21	JML	03/08/04	Legal research regarding potential immunity of local government	0.3	
22	JML	03/08/04	Meeting with client to review new factual documents from him	1.0	
23	JML	03/29/04	Telephone from client regarding new promotion to Captain and memo to TSN regarding advice on new Captain vacancy	0.7	
24	JML	03/31/04	Telephone from client regarding information on eligible candidates for December 2003 Lt. and Captain promotions	0.2	
25	JML	04/02/04	Meeting with client regarding additional information on promotions and eligibility lists and other promotion candidates	0.7	
26	TSN	04/08/04	Review JLR letter to EEOC.	0.1	0.1
27	TSN	04/10/04	Review memo from JLR.	0.1	0.1
28	TSN	04/21/04	Meet with JLR on status of the case.	0.1	
29	JML	04/26/04	Telephone from client regarding new Captain promotion and memo to TSN regarding same	0.7	
30	JML	04/28/04	E-mail to TSN regarding our strategy regarding First Amendment retaliation claims in light of retaliatory re-posting of a Captain promotion after prior promotion list expired	0.2	0.2
31	TSN	04/28/04	Review fact memo from JLR and respond.	0.2	0.2
32	TSN	05/03/04	Review status report from JLR.	0.1	0.1
33	JML	05/27/04	Telephone to client and memo to TSN regarding retaliation: lowered ranking, denied promotion, and Middletown transfer	0.8	
34	TSN	06/08/04	Review status report from JLR.	0.1	0.1
35	JML	06/10/04	Meeting with law clerk regarding statute of limitations issue	0.1	0.1
36	TSN	06/10/04	Discuss with JLR the EEOC timeliness issue.	0.1	
37	JML	06/15/04	Meeting with TSN and SJN regarding filing the First Amendment Complaint	0.5	
38	SJN	06/15/04	Meeting TSN and JLR.	0.1	
39	TSN	06/15/04	Meet with JLR to discuss legal theories and decide to file the case now.	0.5	
40	JML	06/17/04	Review law clerk's legal research memo regarding statute of limitations	0.3	0.3
41	TSN	06/22/04	Review SOL resesarch memo.	0.1	0.1
42	TSN	07/26/04	Meet with JLR about drafting the complaint for filing.	0.2	
43	TSN	07/26/04	Try to reach my client about filing the case.	0.1	

Both Films by Date

3	4	5	6	7	8	9	10	11	12	13	14	15	16
						0.3							
1.0													
0.7													
0.2													
0.7													
0.7													
0.8													
0.1													

Both Filings by Date

	ATTY	Date	Description	Time	2
44	TSN	07/26/04	Telephone with client to set appointment.	0.1	
45	JML	07/27/04	Meeting with TSN and client regarding lawsuit content and strategy	2.0	
46	SJN	07/27/04	Meeting with TSN.	0.1	
47	TSN	07/27/04	Meet with JLR and client to discuss facts, law and filing his case in the next month, our two main legal theories.	1.8	
48	TSN	07/27/04	Meeting with SJN.	0.1	
49	JML	07/28/04	Draft Complaint: Caption, Parties, Jurisdiction, and Wherefore Clause	1.5	
50	JML	07/28/04	Telephone from client regarding dates of his protected activity	0.1	
51	JML	07/29/04	Meeting with TSN regarding defendants to name and allegations to make in the Complaint	0.2	
52	TSN	07/29/04	Meet with JLR about draft complaint and the parties defendant.	0.2	
53	JML	08/03/04	Review TSN memo regarding meeting with client	0.1	0.1
54	JML	08/04/04	Complaint preparation	0.1	
55	JML	08/04/04	Revise Complaint Caption, Parties, and Wherefore Clause	0.2	
56	JML	08/04/04	Complaint preparation: Draft facts relating to employment history and circumstantial evidence of retaliation	1.5	
57	JML	08/04/04	Complaint preparation: Draft allegations regarding defendants' conduct	0.3	
58	JML	08/04/04	Draft Counts I and II: Free Speech and Petition Clause violations	0.3	
59	JML	08/04/04	Draft facts relating to individual defendants' decision making and less qualified successful candidate	0.5	
60	JML	08/09/04	Continue drafting Complaint: Plaintiff's Injuries	0.5	
61	JML	08/14/04	Draft facts regarding cover up of accident	1.2	
62	JML	08/14/04	Draft facts regarding campaign and election improprieties	1.3	
63	JML	08/16/04	Draft Civil Cover Sheet and Summons and revise Complaint	0.6	
64	JML	08/16/04	Complaint preparation: Draft Injunctive relief	0.5	
65	JML	08/17/04	Telephone to client regarding content of his protected speech, retaliatory transfer, and injury to reputation	0.6	
66	JML	08/17/04	Continue drafting Complaint: content of protected speech, retaliatory transfer, and injury to reputation	3.0	

Both Films by Date

3	4	5	6	7	8	9	10	11	12	13	14	15	16
0.1													
1.8													
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Both Firms by Date

	ATTY	Date	Description	Time	2
67	JML	08/17/04	Revise Summons of John Cunningham	0.1	
68	JML	08/17/04	2d telephone call to client regarding his additional information on accident and the continued retaliation	0.3	
69	JML	08/20/04	Telephone to client regarding TSN revision of Complaint	0.3	
70	JML	08/23/04	Revise Complaint based on Friday's conversation with client	0.1	
71	TSN	08/23/04	Work on second draft of complaint.	1.2	
72	TSN	08/23/04	Second draft of the complaint.	2.5	
73	JML	08/24/04	Continue revising of Complaint and telephone to client regarding same	0.4	
74	SJN	08/24/04	Review and edit draft 0.2 of complaint	0.4	
75	TSN	08/24/04	Telephone with client about his draft complaint and his need to review it for factual accuracy and whether he wishes to hold a press conference.	0.1	
76	TSN	08/25/04	Draft 3 of the complaint.	1.9	
77	JML	08/26/04	Telephone to client regarding revised Complaint	0.3	
78	JML	08/27/04	Review TSN's draft Complaint	0.3	
79	SJN	08/27/04	Meeting with TSN.	0.3	
80	TSN	08/27/04	Meeting with Steve	0.3	
81	TSN	08/27/04	Document drafting, copy counsel to review.	0.3	
82	TSN	08/27/04	Telephone from the AP.	0.1	
83	SJN	08/29/04	Review and edit draft 3 of complaint.	0.6	
84	JML	08/30/04	Review and revise draft Complaint	0.2	
85	JML	08/30/04	Meeting with TSN and client regarding pending lawsuit	1.0	
86	JML	08/30/04	Revise Civil Cover Sheet	0.2	
87	TSN	08/30/04	Meet with client to review facts of the complaint and make revisions.	1.0	
88	TSN	08/30/04	Final draft of complaint.	2.5	
89	SJN	08/31/04	Meeting with TSN re filing and related issues.	0.3	

Both Films by Date

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							1.2						
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Both Firms by Date

	ATTY	Date	Description	Time	2
90	SJN	08/31/04	Review latest draft of complaint.	0.3	
91	TSN	08/31/04	Finalize complaint.	0.7	
92	TSN	08/31/04	Draft press release.	0.6	
93	TSN	08/31/04	Meeting with SJN re filing and related issues.	0.3	
94	SJN	09/02/04	Press conference.	1.0	
95	SJN	09/02/04	Fact investigation and meeting with client.	1.3	
96	SJN	09/02/04	Fact investigation re: other incidents where Freebery's has done this.	0.3	
97	SJN	09/02/04	Respond to media inquiries.	0.5	
98	SJN	09/02/04	Telephone with Hank.	0.1	
99	SJN	09/02/04	Telephone calls with Tom.	0.2	
100	SJN	09/02/04	Fact investigation.	0.5	
101	SJN	09/02/04	Calls with Steve.	0.2	
102	TSN	09/02/04	Meeting with client about facts.	1.0	
103	TSN	09/02/04	Attend press conference for client, preparation.	1.4	
104	SJN	09/03/04	Telephone with TSN.	0.1	
105	SJN	09/03/04	Call to Hank.	0.1	
106	SJN	09/03/04	Fact investigation.	0.3	
107	SJN	09/03/04	E-mail to TSN & JLR.	0.1	0.1
108	SJN	09/03/04	Phone call to investigate the facts of the police report being doctored.	0.1	
109	SJN	09/03/04	E-mail to TSN & JLR re: Freebery order via Janet Smith to alter police report.	0.1	0.1
110	SJN	09/03/04	Calls with Steve.	0.2	
111	SJN	09/07/04	Fact investigation.	0.2	
112	SJN	09/08/04	Meeting with TSN.	0.3	

Both Films by Date

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				1.0									
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Both Firms by Date

	ATTY	Date	Description	Time	2
113	TSN	09/08/04	Review fact statements by parties.	0.2	
114	TSN	09/08/04	Review witness statements and email client.	0.4	
115	TSN	09/08/04	Call from M. Allen about the police report claims.	0.2	
116	TSN	09/08/04	E-mail JLR with things to do.	0.2	0.2
117	TSN	09/08/04	Meeting with Steve.	0.3	
118	TSN	09/09/04	Review two e-mails from client and reply.	0.2	
119	TSN	09/09/04	Investigate facts given by client.	0.2	
120	SJN	09/10/04	Fact investigation.	0.1	
121	SJN	09/13/04	Review e-mails.	0.1	0.1
122	TSN	09/13/04	Email to client about preparing rule 26 disclosures.	0.2	
123	SJN	09/30/04	Return call to Bowser re: extension of time on Answer.	0.1	
124	SJN	10/01/04	Meeting with TSN.	0.1	
125	SJN	10/01/04	E-mail to Bowser re: extension of time to file Answer and conflict of interest.	0.1	
126	TSN	10/01/04	Meeting with SJN.	0.1	
127	JML	10/06/04	Telephone from client regarding accident and potential discipline and advise regarding his rights of appeal	0.1	
128	TSN	10/07/04	Review e-mail from client on damages and disparate punishment.	0.1	
129	JML	10/28/04	E-mail to client regarding his potential new employment and its impact on the case	0.2	
130	TSN	11/03/04	Review two e-mails from the client.	0.1	
131	SJN	11/05/04	Meeting with TSN re: D's filing answer or motion for a stay.	0.1	
132	TSN	11/05/04	Meeting with SJN re: D's filing answer or motion for a stay.	0.1	
133	TSN	11/09/04	Review their stay brief and e-mail JLR about a response.	0.2	
134	SJN	11/10/04	Meeting with TSN re: settlement.	0.2	
135	TSN	11/10/04	Discuss with JLR settlement strategy for the case.	0.5	

Both Films by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
136	TSN	11/10/04	Meeting with SJN re: settlement.	0.2	
137	JML	11/15/04	E-mail to client regarding health status report	0.1	
138	JML	11/16/04	Telephone and e-mail to client regarding damages information	0.4	
139	JML	11/16/04	E-mail to plaintiff's counsel regarding our Response to Motion to Stay	0.1	
140	SJN	11/16/04	Motion to stay briefing.	0.2	
141	JML	11/22/04	Begin drafting Memo in Opposition to Motion to Stay	2.2	
142	JML	11/24/04	Continue drafting Response to Motion to Stay	2.1	
143	JML	11/24/04	Continue drafting Response to Motion to Stay	3.5	
144	JML	11/26/04	Finalize Response to Motion to Stay and e-mail to TSN regarding same	1.3	
145	SJN	11/29/04	Review our AB.	0.2	
146	TSN	11/30/04	Review our stay brief.	0.1	
147	TSN	11/30/04	E-mail to JLR.	0.1	0.1
148	TSN	12/05/04	Fact investigation on expected changes in County government in January and effect on this case.	0.5	
149	JML	12/08/04	Telephone to economist regarding retaining him for an expert report	0.3	
150	JML	12/16/04	Telephone from client regarding motion to stay	0.1	
151	TSN	12/19/04	Review stay decision by the court.	0.1	
152	SJN	12/21/04	Meeting with TSN re: settlement strategy.	0.1	
153	TSN	12/21/04	Meet with JLR about settlement strategy.	0.3	
154	TSN	12/21/04	Meeting with SJN re: settlement strategy.	0.1	
155	JML	12/22/04	Telephone to client regarding economist's follow up questions	0.3	
156	JML	12/22/04	Letter to economist regarding follow up data from today's conversation with client	0.4	
157	JML	12/23/04	Review cardiologist medical records and end of year pay stubs for 2001-2004	0.5	
158	JML	12/23/04	Draft letter to economist regarding additional pension documents	0.1	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
159	JML	12/29/04	E-mail to economist regarding his initial draft report	0.1	
160	JML	12/30/04	Telephone to client and 2 calls from client regarding salary range for Lt. Colonel, date of pay increase to Captain QW, and date of promotion to Major	0.3	
161	JML	12/30/04	Draft letter to economist regarding additional information and documents and 4 scenarios of denied promotions and pay increases	0.5	
162	JML	12/31/04	E-mail to Dr. Black regarding 3rd denied promotion scenario	0.2	
163	JML	01/03/05	Review second draft economic report from Dr. Black	0.4	
164	JML	01/03/05	E-mail to economist regarding corrections to latest draft of report	0.1	
165	JML	01/03/05	E-mail from and to economist regarding title page of his report	0.2	
166	TSN	01/05/05	Review TSN settlement concept e-mail.	0.1	
167	TSN	01/05/05	Review Dr. Black report and outline demand package.	0.6	
168	TSN	01/13/05	E-mail to JLR about economic report.	0.1	
169	JML	01/14/05	Telephone to Dr. Black regarding revising his economic report to include tax effect	0.1	
170	TSN	01/16/05	E-mail to JLR about settlement and Monell issues.	0.3	
171	JML	01/17/05	Telephone to client regarding additional information to update economic report to add income tax effect of lump sum recovery	0.1	
172	JML	01/18/05	Contact economist regarding additional documents for him to review	0.1	
173	JML	01/20/05	Begin drafting Settlement package	2.0	
174	TSN	01/26/05	Review revised economic expert report.	0.3	
175	TSN	01/27/05	Telephone with Jeff Goddess.	0.1	
176	TSN	01/27/05	E-mail to JLR>	0.1	0.1
177	TSN	01/29/05	E-mail to JLR.	0.1	0.1
178	TSN	02/02/05	E-mail JLR on Coons transition actions.	0.2	0.2
179	TSN	02/04/05	Meet with KM about NCCPD promotion process.	0.6	
180	JML	02/07/05	E-mail from TSN and to client regarding demand letter	0.2	
181	TSN	02/07/05	E-mail JLR on timing of settlement demand.	0.1	0.1

Both Films by Date

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Both Filings by Date

	ATTY	Date	Description	Time	2
182	TSN	02/09/05	Gather facts on county finances.	0.1	
183	TSN	02/09/05	Think about recusal decision by the court.	0.2	0.2
184	SJN	02/10/05	Meeting with TSN and JLR re: case strategy.	0.4	
185	TSN	02/10/05	Meeting with SJN and JLR re: case strategy.	0.4	
186	JML	02/11/05	Review TSN-SJN draft settlement demand in NCC case	1.5	
187	JML	02/11/05	Continue drafting settlement package	1.4	
188	TSN	02/11/05	File memo on recusal.	0.2	0.2
189	JML	02/14/05	Continue drafting settlement package: Statement of Facts	1.6	
190	JML	02/16/05	Continue drafting settlement demand: Fact Witnesses and Expert Witnesses and Physical Injuries	1.5	
191	JML	02/16/05	Continue drafting settlement demand: Damages, Injuries, Relief, Attorneys' Fees, and Punitives	1.9	
192	JML	02/17/05	Continue drafting settlement package: Argument Section I	1.5	
193	JML	02/17/05	Continue drafting settlement package: Argument Section II	1.5	
194	JML	02/17/05	Continue drafting settlement package: Argument Section III	1.5	
195	JML	02/18/05	Continue drafting settlement package: Finish Argument Section III	0.1	
196	JML	02/18/05	Continue drafting Settlement package: Argument Section IV	1.4	
197	JML	02/18/05	Continue drafting Settlement package: Argument Section V	1.4	
198	JML	02/18/05	Legal research regarding Indemnification Law	0.5	
199	JML	02/18/05	Continue drafting Settlement package: Argument Sections VI and VII	2.0	
200	JML	02/18/05	Continue drafting settlement package: Settlement Proposal	1.0	
201	JML	02/18/05	Review and revise entire 70 page settlement package	1.9	
202	TSN	02/19/05	E-mail on settlement.	0.1	
203	SJN	02/20/05	Review and revise settlement proposal.	0.8	
204	JML	03/03/05	Memorandum to client regarding economic, compensatory, and punitive damages, his economic report, settlement demand package, Dr. Black, and detail report	1.0	

Both Films by Date

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Both Filings by Date

	ATTY	Date	Description	Time	2
205	TSN	03/03/05	Meet with JLR about the case.	0.2	
206	JML	03/08/05	Telephone to client regarding further retaliatory transfer back to Minquedale for shift work	0.1	
207	JML	03/08/05	Memo to TSN regarding further retaliatory transfer back to Minquedale for shift work	0.2	0.2
208	TSN	03/08/05	Review memo on his additional transfer to a new assignment.	0.1	0.1
209	JML	03/14/05	Review litigation report from NCC	0.1	
210	JML	03/14/05	Prepare for today's briefing of TSN for his meeting tomorrow with the County attorney	1.5	
211	JML	03/14/05	Update settlement package to include new developments in the case: Transfer to Patrol Squad B, additional defense attorneys' fees, etc	0.9	
212	JML	03/14/05	E-mail to TSN regarding updated settlement package	0.1	
213	SJN	03/15/05	Meet with TSN and Greg Wilson about settlement the case.	0.2	
214	TSN	03/15/05	Meet with Greg Wison and SNJ about settling the case.	0.2	
215	TSN	03/15/05	E-mail to JLR.	0.1	0.1
216	JML	03/16/05	Review e-mail from TSN and send e-mail to client regarding TSN meeting with County attorney	0.1	
217	SJN	03/18/05	Meet with TSN about the settlement package.	0.3	
218	TSN	03/18/05	meet with SJN about the settlement package.	0.3	
219	TSN	03/18/05	Email to co-counsel	0.1	0.1
220	JML	03/22/05	E-mail from TSN and send e-mail to client regarding Coons' speech of 3/16/05	0.1	
221	TSN	03/22/05	E-mail to JLR	0.1	0.1
222	SJN	03/23/05	Working on settlement package	0.5	
223	JML	03/24/05	E-mail to Dr. Black regarding expert report	0.1	
224	SJN	03/24/05	Meet with TSN about settlement proposal	0.2	
225	SJN	03/24/05	Revising settlement package	1.1	
226	TSN	03/24/05	Meet with SJN re: draft settlement proposal	0.2	
227	TSN	04/05/05	Fact investigation on new public safety director	0.2	

Both Films by Date

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	ATTY	Date	Description	Time	2
228	TSN	04/05/05	Fact investigation on new public safety director	0.2	
229	TSN	04/06/05	Discuss with SJN status of the police dept.	0.2	
230	TSN	04/06/05	Review letter on settlement from client	0.1	
231	JML	04/15/05	Telephone to client regarding demand, meeting, and delivery of settlement package	0.1	
232	JML	04/15/05	E-mail from TSN regarding demand, meeting, and delivery of settlement package and e-mails to and from co-counsel regarding cover letter for settlement package	0.1	
233	TSN	04/15/05	Revise draft demand package	1.1	
234	TSN	04/15/05	Finish revision of demand package	1.5	
235	JML	04/16/05	Begin revising settlement package: pages 1-17	1.0	
236	JML	04/18/05	Continue revising settlement package: pp. 19-65	1.4	
237	JML	04/18/05	Continue revising settlement package: pp. 19-65	1.0	

Both Films by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
238	JML	04/18/05	Continue drafting 67 page settlement package	1.0	
239	JML	04/18/05	Begin drafting letter to County attorney regarding settlement package	0.2	
240	SJN	04/18/05	Meeting with TSN re: settlement package	0.1	
241	TSN	04/18/05	E-mails from JLR	0.1	0.1
242	TSN	04/18/05	Meeting with SJN re: settlement package	0.1	
243	JML	04/19/05	Finalize letter to county attorney regarding settlement package	0.1	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
244	JML	04/19/05	Revise settlement package	0.3	
245	SJN	04/19/05	E-mail from JLR re: retaliatory transfer	0.1	0.1
246	JML	04/21/05	Draft section on Plaintiff's superior qualifications	0.7	
247	JML	04/21/05	Review and finalize 67 page demand package	1.5	
248	JML	04/21/05	E-mail to TSN regarding demand package	0.1	
249	JML	04/22/05	Finalize demand package with most recent revisions and e-mail to The Neuberger Firm regarding same	0.2	
250	SJN	04/22/05	Meeting with SJN re: status of case, and planning out discovery and trial	0.3	
251	TSN	04/22/05	Meeting with TSN re: status of case, and planning out discovery and trial	0.3	
252	TSN	04/22/05	Review and approve settlement documents	0.4	
253	TSN	04/22/05	Meet with client to review and obtain approval of demand package and our negotiating strategy	1.5	
254	TSN	04/22/05	E-mail to co-counsel	0.1	0.1
255	JML	04/26/05	Telephone to client and e-mail to TSN regarding delivery of demand package	0.1	
256	TSN	05/12/05	E-mail on witnesses	0.1	0.1
257	TSN	05/19/05	Review e-mail from client	0.1	
258	JML	05/20/05	Telephone to client regarding demand response and e-mail to TSN regarding same	0.2	
259	TSN	05/20/05	Meet with JLR about failure of settlement efforts	0.1	
260	TSN	05/26/05	E-mail to client	0.2	
261	TSN	06/07/05	E-mail from client and reply on his medical condition and damages	0.4	
262	TSN	06/07/05	E-mail to client	0.2	
263	TSN	06/07/05	E-mail from JLR and respond	0.1	0.1
264	TSN	06/08/05	Speak with JLR about the facts	0.1	0.1
265	TSN	06/25/05	Telephone with client	0.1	
266	TSN	06/25/05	Speak with client about status of the case	0.3	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
267	TSN	06/27/05	E-mail on removal of the Chief	0.5	0.5
268	TSN	06/28/05	Fact investigation	0.3	
269	JML	07/05/05	Review e-mail from TSN and e-mail to client regarding County's reported financial deficit	0.1	
270	JML	07/18/05	Telephone to client regarding County's reported financial deficit	0.1	
271	TSN	07/21/05	E-mail from client and respond	0.2	
272	TSN	08/23/05	Discuss status of the case with JLR	0.1	
273	TSN	08/25/05	Letter to client	0.2	
274	TSN	09/09/05	E-mail to co-counsel	0.1	0.1
275	TSN	10/04/05	E-mail from client and respond	0.1	
276	TSN	12/30/05	E-mail from client and reply on status of the case	0.3	
277	TSN	01/31/06	Reply to clients e-mail on his damages	0.2	
278	TSN	03/18/06	E-mail from client and respond	0.1	
279	TSN	06/01/06	E-mail from client and respond	0.1	
280	TSN	06/22/06	E-mail from client and reply	0.1	
281	TSN	06/22/06	E-mail from client and reply	0.1	
282	SJN	07/05/06	Meeting with TSN re: impact of Garcetti	0.1	
283	TSN	07/05/06	Meeting with SJN re: impact of Garcetti	0.1	
284	JML	07/25/06	Meeting with TSN regarding case in light of new SCt case	0.2	
285	TSN	07/25/06	Meet with JLR about status of the case	0.2	
286	TSN	08/10/06	Call from client	0.1	
287	TSN	08/10/06	E-mail to JLR and client	0.1	0.1
288	JML	08/14/06	Telephone to client and e-mail to TSN regarding Supreme Court decision	0.2	
289	JML	08/14/06	Review Garcetti decision and analyze its impact on the case	1.0	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
290	JML	08/14/06	Review TSN brief regarding Garcetti case law affecting this case	0.5	0.5
291	JML	08/15/06	Telephone to client and e-mail to TSN regarding S.Ct. decision	0.2	
292	TSN	08/29/06	Review file	0.4	
293	JML	08/30/06	Meeting with TSN and client regarding new settlement strategy	1.1	
294	JML	08/30/06	Draft Memo to TSN regarding today's meeting	0.6	0.6
295	SJN	08/30/06	Meeting with TSN re: settlement issues	0.2	
296	TSN	08/30/06	Meet with client and JLR about settlement authority	1.3	
297	TSN	08/30/06	Meeting with SJN re: settlement issues	0.2	
298	JML	09/13/06	E-mail to co-counsel regarding settlement initiatives	0.1	
299	JML	09/14/06	Meeting with co-counsel regarding NCC settlement initiatives	0.5	
300	JML	09/26/06	E-mail to co-counsel regarding NCC settlement talks	0.1	
301	JML	09/28/06	Telephone from co-counsel regarding status of settlement talks	0.1	
302	JML	10/02/06	Draft renewed settlement demand letter	2.5	
303	TSN	10/02/06	Edit demand letter	0.2	
304	JML	10/03/06	Finalize renewed demand letter	1.8	
305	TSN	10/06/06	Meet with JLR on status of the case	0.1	
306	JML	11/10/06	Telephone to client regarding his case status	0.1	
307	TSN	11/10/06	Meet with JLR about status of negotiations	0.1	
308	TSN	12/06/06	Meet with JLR about settlement strategy	0.1	
309	SJN	12/16/06	Pleadings review	0.1	
310	TSN	01/02/07	Telephone with the USM about the case	0.1	
311	TSN	01/09/07	Try to reach my client	0.1	
312	TSN	01/09/07	Telephone with client	0.1	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
313	SJN	01/11/07	Meeting with Hank re: settlement and case status	2.0	
314	TSN	01/12/07	Review e-mail	0.1	0.1
315	TSN	03/08/07	E-mail from client and respond	0.1	
316	TSN	05/02/07	E-mail to co-counsel on settlement	0.1	
317	SJN	05/03/07	E-mail from JLR	0.1	0.1
318	TSN	05/29/07	E-mail on interview fact witnesses	0.2	0.2
319	TSN	05/29/07	Fact investigation, attend the deposition of Maloney & Rendina on the operation of NCC	1.4	
320	JML	06/01/07	Telephone from client and e-mail to TSN regarding police report of Freeberry accident	0.3	
321	TSN	06/01/07	E-mail from JLR and reply	0.1	0.1
322	TSN	06/01/07	E-mail to JLR about IA inquire to client	0.1	0.1
323	TSN	06/03/07	E-mail to Maloney statements	0.1	
324	RW	06/05/07	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.7	
325	RW	06/06/07	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.5	
326	RW	06/06/07	Memo to TSN re: Maloney/Rendina testimony in Wilmington Hospitality case	0.8	
327	TSN	06/06/07	E-mail on lifting the stay	0.2	
328	JML	06/07/07	Legal and factual analysis: review e-mail from TSN, Complaint, and send e-mail to TSN regarding defendant Gordon	1.3	
329	TSN	06/07/07	E-mail on evidence issue	0.2	0.2
330	TSN	06/14/07	Meet with Maloney and Rendina about the facts of the case	1.0	
331	TSN	06/15/07	Telephone with JLR about fact investigation	0.2	
332	JML	06/18/07	E-mail to RW regarding depositions of LM and MR and to CAH regarding affidavits of LM and MR	0.2	
333	SJN	06/18/07	Meeting with TSN re: amending complaint	0.1	
334	TSN	06/18/07	Meeting with SJN re: amending complaint	0.1	
335	TSN	06/18/07	E-mail from client and reply	0.2	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
336	TSN	06/18/07	E-mail on the stay	0.1	
337	JML	06/19/07	E-mail to TSN regarding no Answer filed and amending the Complaint	0.1	
338	JML	06/19/07	Review Complaint and deposition testimony of LM in County case	1.5	
339	JML	06/19/07	Review deposition testimony of MR in County case	0.1	
340	JML	06/19/07	Review memo from RW regarding trial testimony of LM and MR in NCC case	0.3	
341	JML	06/19/07	Review deposition of defendant Freeberry in County police case	2.0	
342	JML	06/19/07	Prepare questions for interviews of witnesses LM and MR	1.0	
343	JML	06/20/07	Continue preparing interview questions	0.5	
344	JML	06/20/07	Telephone to LM regarding interview	0.1	
345	JML	06/20/07	Draft letter to LM and MR regarding interview	0.3	
346	JML	06/21/07	E-mail to witness regarding interviews	0.2	
347	SJN	06/24/07	Legal research - speech to grand jury still protect post-Garcetti cases	0.2	
348	JML	06/27/07	Interview MR regarding case	2.0	
349	JML	06/27/07	Interview LM regarding case	2.2	
350	CAS	07/02/07	E-mail to JLR regarding affidavits and plea agreement	0.2	0.2
351	CAS	07/09/07	Review e-mail from TSN regarding client's new job	0.1	0.1
352	JML	07/09/07	Draft Declaration of LM	3.0	
353	JML	07/09/07	Telephone to TSN regarding case status	0.3	
354	JML	07/09/07	E-mail to TSN regarding damages	0.4	0.4
355	SJN	07/09/07	Call from TSN	0.2	
356	SJN	07/09/07	Review draft declaration and send amended complaint and unstaying letter to JLR	0.2	0.2
357	TSN	07/09/07	Telephone with client	0.2	
358	TSN	07/09/07	Review L. Maloney declaration	0.2	

Both Firms by Date

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	ATTY	Date	Description	Time	2
359	TSN	07/09/07	Discuss lifting the stay with JLR and strategy	0.3	
360	TSN	07/09/07	Telephone with SJN on strategy	0.2	
361	JML	07/10/07	Draft Declaration of MR	3.0	
362	JML	07/10/07	Telephone to LM regarding additional facts for Declaration	0.1	
363	TSN	07/10/07	Telephone with client, return call from media	0.2	
364	JML	07/11/07	Review Riddel original and first amended complaints for our First Amended Complaint	1.0	
365	JML	07/11/07	Begin drafting First Amended Complaint	1.2	
366	JML	07/11/07	Revise draft 1 of First Amended Complaint and e-mail to TSN regarding same	1.5	
367	JML	07/12/07	Revise First Amended Complaint	0.4	
368	JML	07/12/07	Telephone to MR regarding facts	1.4	
369	TSN	07/12/07	Review amended complaint	0.2	
370	JML	07/13/07	Revise MR Declaration	1.1	
371	JML	07/13/07	Revise Declaration of LM	1.4	
372	SJN	07/14/07	Review and revise first amended complaint	0.7	
373	CAS	07/16/07	E-mail from TSN regarding amended complaint and stay	0.1	0.1
374	JML	07/23/07	Finalize Declaration of LM	0.4	
375	JML	07/24/07	Finalize First Amended Complaint	1.5	
376	JML	07/24/07	Draft letter to USM regarding lifting stay	0.5	
377	SJN	07/25/07	Pleadings review	0.1	
378	JML	07/26/07	E-mail to co-counsel regarding Declarations and other NCC material	0.1	0.1
379	JML	08/23/07	E-mail to MR regarding her declaration	0.1	
380	JML	08/27/07	Finalize declaration of MR and e-mail to witness regarding same	1.0	
381	CAS	08/28/07	Review e-mail from JLR regarding status	0.1	0.1

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
382	TSN	08/28/07	E-mail on status	0.1	0.1
383	CAS	08/31/07	E-mails from TSN	0.1	0.1
384	TSN	08/31/07	E-mail to client	0.2	
385	TSN	08/31/07	E-mail to client	0.2	
386	CAS	09/05/07	E-mail from TSN to client regarding settlement	0.1	
387	TSN	09/05/07	E-mail from client and respond	0.2	
388	JML	09/12/07	Telephone to client regarding case status	0.4	
389	JML	09/13/07	Meeting with client regarding settlement	1.3	
390	JML	09/13/07	E-mail to client regarding today's meeting	0.3	
391	TSN	09/13/07	Meet with client about settlement	1.3	
392	JML	09/24/07	Draft new demand letter to NCC	1.5	
393	JML	09/24/07	E-mail to TSN regarding draft demand letter	0.2	
394	JML	09/25/07	Revise demand letter	0.3	
395	TSN	09/25/07	E-mail from JLR	0.1	0.1
396	TSN	09/25/07	Review and edit settlement demand	0.4	
397	JML	09/26/07	Review and finalize settlement demand 3	0.3	
398	TSN	10/09/07	Meet with MH	0.1	
399	JML	10/25/07	Meeting with co-counsel regarding settlement	1.5	
400	JML	10/25/07	E-mail to client regarding sending settlement letter to the judge	0.1	
401	TSN	10/25/07	Meet with MH re: the case	0.1	
402	JML	11/06/07	Draft letter to USM regarding settlement offer	0.4	
403	JML	11/09/07	Finalize letter to USM	0.2	
404	JML	11/15/07	Meeting with TSN regarding case status	0.5	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
405	JML	11/15/07	Telephone to client regarding consent to magistrate's jurisdiction	0.2	
406	JML	11/15/07	E-mail to TSN regarding consent to Magistrate's jurisdiction	0.2	0.2
407	JML	11/15/07	Draft letter to counsel regarding Scheduling Order	0.5	
408	JML	11/15/07	Draft Join Proposed Scheduling Order	1.4	
409	JML	11/15/07	E-mail to TSN regarding joint proposed scheduling order	0.1	0.1
410	SJN	11/15/07	Pleadings review	0.1	
411	TSN	11/15/07	Discuss case with MH	0.2	
412	TSN	11/15/07	Meet with JLR about discovery and trial	0.3	
413	JML	11/17/07	Finalize letter to counsel regarding scheduling order	0.5	
414	CAS	11/26/07	Review e-mail from defense counsel	0.1	
415	JML	11/26/07	Meeting with TSN regarding defendants attempt to delay case with a briefing schedule	0.3	
416	JML	11/26/07	E-mail to counsel regarding its demand for briefing schedule	0.1	
417	TSN	11/26/07	Meet with JLR about Rule 16 opposition by defense	0.2	
418	JML	11/28/07	Draft letter to USM regarding scheduling teleconference	0.5	
419	TSN	11/28/07	Review letter to court	0.1	
420	JML	11/29/07	Finalize letter to Court regarding scheduling order	0.4	
421	TSN	12/03/07	E-mail on Rule 16 conf.	0.2	0.2
422	SJN	12/04/07	Legal research - grand jury speech protected post-Garcetti	1.0	
423	SJN	12/04/07	E-mails and telephone calls from and to TSN re: Garcetti issues	0.4	0.4
424	CAS	12/05/07	Review e-mails from SJN and TSN	0.1	0.1
425	CAS	12/05/07	Review e-mail to defense counsel from SJN	0.1	0.1
426	SJN	12/05/07	Review amended complaint	0.1	
427	SJN	12/05/07	E-mail to defense counsel, responding on Garcetti issues	0.8	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
428	CAS	12/06/07	Locate proposed Rule 16 order	0.4	
429	CAS	12/06/07	Meeting with SJN re: Rule 16 order	0.1	
430	SJN	12/06/07	Speak with CAH re: Rule 16 order	0.1	
431	SJN	12/06/07	Review and prepare for Rule 16 teleconference on briefing	1.0	
432	JML	12/07/07	Prepare for teleconference	1.0	
433	JML	12/07/07	Rule 16 Teleconference with USM regarding scheduling and consent to USM	0.7	
434	JML	12/07/07	Draft Consent to USM jurisdiction and e-mail to TSN regarding the same	0.8	
435	SJN	12/07/07	E-mails to co-counsel	0.1	0.1
436	SJN	12/07/07	Review and prep for teleconference	0.3	
437	SJN	12/07/07	Rule 16 teleconference with Court	0.7	
438	SJN	12/07/07	Call to TSN re: status update and Rule 16	0.4	
439	TSN	12/07/07	Telephone with SJN re: conference with the court today	0.3	
440	SJN	12/08/07	Review draft stips	0.1	0.1
441	SJN	12/08/07	E-mails to JLR	0.1	0.1
442	SJN	12/08/07	Pleadings review	0.1	
443	TSN	12/08/07	E-mail to co-counsel	0.2	0.2
444	SJN	12/10/07	E-mails from and to defense counsel	0.1	
445	SJN	12/10/07	Pleadings review	0.1	
446	JML	12/11/07	Draft form of order for lifting the stay and e-mail to counsel regarding same	0.4	
447	SJN	12/12/07	E-mail from JLR	0.1	0.1
448	TSN	12/12/07	Telephone with client about further proceedings in his case and discovery and trial	0.4	
449	SJN	12/30/07	Legal research - post-Garcetti-whistleblowing - new CofA authority	0.3	
450	JML	01/08/08	E-mail to SJN regarding briefing	0.1	

Both Firms by Date

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	ATTY	Date	Description	Time	2
451	SJN	01/08/08	Pleadings review	0.1	
452	SJN	01/13/08	Legal research - grand jury speech and Garcetti	0.2	
453	CAS	01/17/08	Handle overbilling of conference call	0.2	
454	CAS	01/17/08	Draft memo re: teleconference billing issue	0.1	
455	TSN	02/01/08	E-mail to JLR about offer to judgment	0.2	
456	SJN	02/02/08	Drafting M to D AB	0.3	
457	TSN	02/02/08	Analyze offer of judgment	0.2	
458	TSN	02/02/08	Analyze offer of judgment	0.2	
459	SJN	02/03/08	Drafting M to D AB	5.4	
460	JML	02/04/08	Meeting with TSN regarding offer of judgment	0.1	
461	JML	02/04/08	Telephone to client regarding offer of judgment	0.4	
462	JML	02/04/08	Memo to TSN regarding conversation with client	0.4	
463	SJN	02/04/08	Drafting M to D AB	7.0	
464	TSN	02/04/08	Review e-mail on settlement	0.2	
465	CAS	02/05/08	E-mail to law clerk re: bluebooking	0.1	
466	JML	02/05/08	Review and revise SJN Brief draft 1	1.5	
467	SJN	02/05/08	Drafting M to D AB	3.1	
468	TSN	02/05/08	Review current draft of our opposition brief	0.2	
469	JML	02/06/08	Revise SJN brief draft 2	1.3	
470	JML	02/06/08	Revise SJN brief draft 3	0.5	
471	SJN	02/06/08	Meeting with TSN re: briefing	0.3	
472	SJN	02/06/08	Finalizing M to D AB	8.3	
473	TSN	02/06/08	Meeting with SJN re: briefing	0.3	

Both Firms by Date

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	ATTY	Date	Description	Time	2
474	TSN	02/06/08	Draft 4 of brief	1.3	
475	TSN	02/06/08	Revise petition clause section of brief	0.2	
476	CAS	02/07/08	File brief and serve copy on court	0.2	
477	CAS	02/08/08	Review e-mails from TSN	0.1	0.1
478	JML	02/08/08	Telephone to client regarding offer of judgment	0.1	
479	JML	02/08/08	Telephone from client regarding settlement decision	0.2	
480	JML	02/08/08	Memo to TSN regarding brief, offer of judgment, and settlement decision	0.5	
481	JML	02/08/08	E-mail to TSN regarding client's portion of offer of judgment	0.1	
482	TSN	02/08/08	Review clients instructions on settlement and e-mail approval	0.2	
483	CAS	02/09/08	Review various e-mails	0.1	0.1
484	JML	02/09/08	Draft Notice of Acceptance of Offer of Judgment to opposing counsel	0.1	
485	JML	02/09/08	Draft letter to Court regarding acceptance of offer of judgment	0.4	
486	TSN	02/09/08	Telephone meeting with client about settlement decision	0.6	
487	CAS	02/10/08	Review e-mails from TSN	0.1	0.1
488	RW	02/10/08	E-mail from TSN	0.1	0.1
489	JML	02/11/08	Teleconference with the Court regarding acceptance of offer of judgment and draft order of judgment to be submitted to the Court	0.3	
490	RW	02/11/08	E-mail press release	0.1	
491	TSN	02/11/08	Attend telephone conference with the court about resolution of the case and a fee application	0.2	
492	CAS	02/12/08	Pleadings review and distribution	0.1	
493	JML	02/14/08	Telephone from client regarding pension issue	0.1	
494	JML	02/15/08	Telephone to counsel regarding pension issue and draft Order of Judgment	0.1	
495	JML	02/15/08	E-mail to counsel regarding pension and Order of Judgment and e-mail to client regarding pension issue	0.2	
496	JML	02/19/08	E-mail to TSN regarding defendants' 2d draft proposed form of order of judgment	0.1	

Both Firms by Date

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Both Firms by Date

	ATTY	Date	Description	Time	2
497	JML	02/19/08	2d e-mail to TSN regarding counsel's 2d draft form of Order of Judgment	0.1	
498	JML	02/20/08	E-mail from opposing counsel and to opposing counsel regarding her 2d draft order of judgment and our pending filing with the Court	0.1	
499	JML	02/21/08	Draft letter to magistrate regarding proposed form of order	0.1	
500	JML	02/21/08	E-mail to TSN regarding draft letter to USM regarding draft form of judgment order	0.1	
501	JML	02/22/08	E-mail to SJN regarding my letter to the Judge	0.2	
502	SJN	02/22/08	Attempts to log into Pacer to see filings	0.2	
503	TSN	02/22/08	Review DI 28	0.1	
504	SJN	02/25/08	Pleadings review	0.1	
505	TSN	02/25/08	Analyze and create 5 documents to support our fee application. Create a [entry stops]	2.5	

EXHIBIT

4

Both Firms by Date

ATTY	Date	Description	Time
CAS	07/02/07	E-mail to JLR regarding affidavits and plea agreement	0.2
CAS	07/09/07	Review e-mail from TSN regarding client's new job	0.1
CAS	07/16/07	E-mail from TSN regarding amended complaint and stay	0.1
CAS	08/28/07	Review e-mail from JLR regarding status	0.1
CAS	08/31/07	E-mails from TSN	0.1
CAS	09/05/07	E-mail from TSN to client regarding settlement	0.1
CAS	11/26/07	Review e-mail from defense counsel	0.1
CAS	12/05/07	Review e-mails from SJN and TSN	0.1
CAS	12/05/07	Review e-mail to defense counsel from SJN	0.1
CAS	12/06/07	Locate proposed Rule 16 order	0.4
CAS	12/06/07	Meeting with SJN re: Rule 16 order	0.1
CAS	01/17/08	Handle overbilling of conference call	0.2
CAS	01/17/08	Draft memo re: teleconference billing issue	0.1
CAS	02/05/08	E-mail to law clerk re: bluebooking	0.1
CAS	02/07/08	File brief and serve copy on court	0.2
CAS	02/08/08	Review e-mails from TSN	0.1
CAS	02/09/08	Review various e-mails	0.1
CAS	02/10/08	Review e-mails from TSN	0.1
CAS	02/12/08	Pleadings review and distribution	0.1
		Cheryl Hertzog Time	2.5

ATTY	Date	Description	Time
RW	06/05/07	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.7
RW	06/06/07	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.5
RW	06/06/07	Memo to TSN re: Maloney/Rendina testimony in Wilmington Hospitality case	0.8
RW	02/10/08	E-mail from TSN	0.1
RW	02/11/08	E-mail press release	0.1
		Total Time Warner	2.2

EXHIBIT

5

Line No.	Time	
43	0.1	
44	0.1	
63	0.6	
67	0.1	
86	0.2	
311	0.1	
428	0.4	
446	0.4	
453	0.2	
454	0.1	
476	0.2	
Total Clerical Time		2.5
292	0.4	
309	0.1	
377	0.1	
410	0.1	
442	0.1	
445	0.1	
451	0.1	
492	0.1	
502	0.2	
503	0.1	
505	0.1	
Total Review Pleadings Time		1.5

EXHIBIT

6

Line No.	Time	
26	0.1	
27	0.1	
28	0.1	
35	0.1	
36	0.1	
40	0.3	
41	0.1	
Total EEOC Time		0.9

75	0.1	
82	0.1	
92	0.6	
94	1	
97	0.5	
103	1.4	
363	0.2	
490	0.1	
Total Press Time		4

505	2.5	
Total Fee Petition Time		2.5

EXHIBIT

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	B	C	D	E
1	ATTY	Date	Description	Time
239	CAS	7/2/2007	E-mail to JLR regarding affidavits and plea agreement	0.2
240	RW	6/5/2007	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.7
241	RW	6/6/2007	Attend Wilmington Hospitality v. NCC with Maloney and Rendina/witnesses	0.5
242	RW	6/6/2007	Memo to TSN re: Maloney/Rendina testimony in Wilmington Hospitality case	0.8
243	SJN	9/3/2004	E-mail to TSN & JLR re: Freebery order via Janet Smith to alter police report.	0.1
244	SJN	7/5/2006	Meeting with TSN re: impact of Garcetti	0.1
245	SJN	6/24/2007	Legal research - speech to grand jury still protect post-Garcetti cases	0.2
246	TSN	4/8/2004	Review JLR letter to EEOC.	0.1
247	TSN	4/10/2004	Review memo from JLR.	0.1
248	TSN	6/10/2004	Discuss with JLR the EEOC timeliness issue.	0.1
249	TSN	6/22/2004	Review SOL resesarch memo.	0.1
250	TSN	9/8/2004	Call from M. Allen about the police report claims.	0.2
251	TSN	1/27/2005	Telephone with Jeff Goddess.	0.1
252	TSN	2/2/2005	E-mail JLR on Coons transition actions.	0.2
253	TSN	2/4/2005	Meet with KM about NCCPD promotion process.	0.6
254	TSN	2/9/2005	Think about recusal decision by the court.	0.2
255	TSN	2/11/2005	File memo on recusal.	0.2
256	TSN	4/5/2005	Fact investigation on new public safety director	0.2
257	TSN	4/5/2005	Fact investigation on new public safety director	0.2
258	TSN	7/5/2006	Meeting with SJN re: impact of Garcetti	0.1
259	TSN	5/29/2007	Fact investigation, attend the deposition of Maloney & Rendina on the operation of NCC	1.4
260	TSN	6/3/2007	E-mail to Maloney statements	0.1
261	TSN	6/14/2007	Meet with Maloney and Rendina about the facts of the case	1.0
262	TSN	7/9/2007	Review L. Maloney declaration	0.2
263	TSN	10/9/2007	Meet with MH	0.1
264	TSN	10/25/2007	Meet with MH re: the case	0.1
265	TSN	11/15/2007	Discuss case with MH	0.2
266			Total Unrelated Neuberger	8.1

	B	C		E
1	ATTY	Date	Description	Time
197	JML	13-Jul-2007	Revise MR Declaration	1.1
198	JML	13-Jul-2007	Revise Declaration of LM	1.4
199	JML	23-Jul-2007	Finalize Declaration of LM	0.4
200	JML	26-Jul-2007	E-mail to co-counsel regarding Declarations and other NCC material	0.1
201	JML	23-Aug-2007	E-mail to MR regarding her declaration	0.1
202	JML	27-Aug-2007	Finalize declaration of MR and e-mail to witness regarding same	1.0
203			Total Unrelated LaRosa	27.1

EXHIBIT

8

	B	C	D	E
1	ATTY	Date	Description	Time
2	CAS	7/16/2007	E-mail from TSN regarding amended complaint and stay	0.1
3	SJN	6/18/2007	Meeting with TSN re: amending complaint	0.1
4	SJN	7/9/2007	Review draft declaration and send amended complaint and unstaying letter to JLR	0.2
5	SJN	7/14/2007	Review and revise first amended complaint	0.7
6	TSN	6/18/2007	Meeting with SJN re: amending complaint	0.1
7	TSN	7/12/2007	Review amended complaint	0.2
8			Total Amended Complaint Neuberger	1.4

	B	C	D	E
1	ATTY	Date	Description	Time
30	SJN	8/24/2004	Review and edit draft 2 of complaint	0.4
31	SJN	8/29/2004	Review and edit draft 3 of complaint.	0.6
32	SJN	8/31/2004	Review latest draft of complaint.	0.3
33	TSN	8/23/2004	Work on second draft of complaint.	1.2
34	TSN	8/23/2004	Second draft of the complaint.	2.5
35	TSN	8/25/2004	Draft 3 of the complaint.	1.9
36	TSN	8/30/2004	Final draft of complaint.	2.5
37	TSN	8/31/2004	Finalize complaint.	0.7
38			Total Complaint Neuberger	10.1

EXHIBIT

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	B	C		E
1	ATTY	Date	Description	Time
123	SJN	11/10/2004	Meeting with TSN re: settlement.	0.2
124	SJN	12/21/2004	Meeting with TSN re: settlement strategy.	0.1
125	SJN	1/5/2005	Review TSN settlement concept e-mail.	0.1
126	SJN	2/20/2005	Review and revise settlement proposal.	0.8
127	SJN	3/15/2005	Meet with TSN and Greg Wilson about settlement the case.	0.2
128	SJN	3/18/2005	Meet with TSN about the settlement package.	0.3
129	SJN	3/23/2005	Working on settlement package	0.5
130	SJN	3/24/2005	Meet with TSN about settlement proposal	0.2
131	SJN	3/24/2005	Revising settlement package	1.1
132	SJN	4/18/2005	Meeting with TSN re: settlement package	0.1
133	TSN	11/10/2004	Discuss with JLR settlement strategy for the case.	0.5
134	TSN	11/10/2004	Meeting with SJN re: settlement.	0.2
135	TSN	12/21/2004	Meet with JLR about settlement strategy.	0.3
136	TSN	12/21/2004	Meeting with SJN re: settlement strategy.	0.1
137	TSN	1/16/2005	E-mail to JLR about settlement and Monell issues.	0.3
138	TSN	2/7/2005	E-mail JLR on timing of settlement demand.	0.1
139	TSN	2/19/2005	E-mail on settlement.	0.1
140	TSN	3/15/2005	Meet with Greg Wison and SNJ about settling the case.	0.2
141	TSN	3/24/2005	Meet with SJN re: draft settlement proposal	0.2
142	TSN	4/6/2005	Review letter on settlement from client	0.1
143	TSN	4/15/2005	Revise draft demand package	1.1
144	TSN	4/15/2005	Finish revision of demand package	1.5
145	TSN	4/18/2005	Meeting with SJN re: settlement package	0.1
146	TSN	4/22/2005	Review and approve settlement documents	0.4
147	TSN	4/22/2005	Meet with client to review and obtain approval of demand package and our negotiating strategy	1.5
148			Total Time for 2005 Demand (Neuberger Firm)	10.3

	B	C		E
1	ATTY	Date	Description	Time
164				
165	CAS	8/31/2007	E-mails from TSN	0.1
166	CAS	12/5/2007	Review e-mails from SJN and TSN	0.1
167	CAS	12/5/2007	Review e-mail to defense counsel from SJN	0.1
168	CAS	2/8/2008	Review e-mails from TSN	0.1
169	CAS	2/9/2008	Review various e-mails	0.1
170	CAS	2/10/2008	Review e-mails from TSN	0.1
171	RW	2/10/2008	E-mail from TSN	0.1
172	SJN	8/27/2004	Meeting with TSN.	0.3
173	SJN	9/2/2004	Telephone with Hank.	0.1
174	SJN	9/2/2004	Telephone calls with Tom.	0.2
175	SJN	9/2/2004	Fact investigation.	0.5
176	SJN	9/3/2004	Telephone with TSN.	0.1
177	SJN	9/3/2004	Call to Hank.	0.1
178	SJN	9/3/2004	E-mail to TSN & JLR.	0.1
179	SJN	9/3/2004	Calls with Steve.	0.2
180	SJN	9/8/2004	Meeting with TSN.	0.3
181	SJN	9/13/2004	Review e-mails.	0.1
182	SJN	10/1/2004	Meeting with TSN.	0.1
183	SJN	5/3/2007	E-mail from JLR	0.1
184	SJN	7/9/2007	Call from TSN	0.2
185	SJN	12/7/2007	E-mails to co-counsel	0.1
186	SJN	12/8/2007	E-mails to JLR	0.1
187	SJN	12/10/2007	E-mails from and to defense counsel	0.1
188	SJN	12/12/2007	E-mail from JLR	0.1
189	TSN	8/27/2004	Meeting with Steve	0.3
190	TSN	8/27/2004	Document drafting, copy counsel to review.	0.3

	B	C		E
1	ATTY	Date	Description	Time
142	JML	20-May-2005	Telephone to client regarding demand response and e-mail to TSN regarding same	0.2
143	JML	30-Aug-2006	Meeting with TSN and client regarding new settlement strategy	1.1
144	JML	30-Aug-2006	Draft Memo to TSN regarding today's meeting	0.6
145	JML	13-Sep-2006	E-mail to co-counsel regarding settlement initiatives	0.1
146	JML	14-Sep-2006	Meeting with co-counsel regarding NCC settlement initiatives	0.5
147	JML	26-Sep-2006	E-mail to co-counsel regarding NCC settlement talks	0.1
148	JML	28-Sep-2006	Telephone from co-counsel regarding status of settlement talks	0.1
149	JML	2-Oct-2006	Draft renewed settlement demand letter	2.5
150	JML	3-Oct-2006	Finalize renewed demand letter	1.8
151	JML	10-Nov-2006	Telephone to client regarding his case status	0.1
152	JML	9-Jul-2007	E-mail to TSN regarding damages	0.4
153	JML	12-Sep-2007	Telephone to client regarding case status	0.4
154	JML	13-Sep-2007	Meeting with client regarding settlement	1.3
155	JML	13-Sep-2007	E-mail to client regarding today's meeting	0.3
156	JML	24-Sep-2007	Draft new demand letter to NCC	1.5
157	JML	24-Sep-2007	E-mail to TSN regarding draft demand letter	0.2
158	JML	25-Sep-2007	Revise demand letter	0.3
159	JML	26-Sep-2007	Review and finalize settlement demand 3	0.3
160	JML	25-Oct-2007	Meeting with co-counsel regarding settlement	1.5
161	JML	25-Oct-2007	E-mail to client regarding sending settlement letter to the judge	0.1
162	JML	6-Nov-2007	Draft letter to USM regarding settlement offer	0.4
163	JML	9-Nov-2007	Finalize letter to USM	0.2
164			Total Time 2006 Demand LaRosa Firm	14.0

	B	C		E
1	ATTY	Date	Description	Time
149	CAS	9/5/2007	E-mail from TSN to client regarding settlement	0.1
150	SJN	8/30/2006	Meeting with TSN re: settlement issues	0.2
151	SJN	1/11/2007	Meeting with Hank re: settlement and case status	2.0
152	TSN	5/20/2005	Meet with JLR about failure of settlement efforts	0.1
153	TSN	1/31/2006	Reply to clients e-mail on his damages	0.2
154	TSN	8/30/2006	Meet with client and JLR about settlement authority	1.3
155	TSN	8/30/2006	Meeting with SJN re: settlement issues	0.2
156	TSN	10/2/2006	Edit demand letter	0.2
157	TSN	10/6/2006	Meet with JLR on status of the case	0.1
158	TSN	11/10/2006	Meet with JLR about status of negotiations	0.1
159	TSN	12/6/2006	Meet with JLR about settlement strategy	0.1
160	TSN	5/2/2007	E-mail to co-counsel on settlement	0.1
161	TSN	9/13/2007	Meet with client about settlement	1.3
162	TSN	9/25/2007	Review and edit settlement demand	0.4
163			Total Time 2006 Demand Neuberger Firm	6.4

EXHIBIT

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	B	C		E
1	ATTY	Date	Description	Time
170	JML	10-Oct-2003	Review deposition of Colonel Cunningham regarding promotions in NCC PD	0.3
171	JML	10-Oct-2003	Memo to TSN regarding Cunningham deposition testimony regarding NCC PD promotions	0.8
172	JML	10-Jun-2004	Meeting with law clerk regarding statute of limitations issue	0.1
173	JML	17-Jun-2004	Review law clerk's legal research memo regarding statute of limitations	0.3
174	JML	23-Dec-2004	Review cardiologist medical records and end of year pay stubs for 2001-2004	0.5
175	JML	25-Jul-2006	Meeting with TSN regarding case in light of new SCt case	0.2
176	JML	14-Aug-2006	Telephone to client and e-mail to TSN regarding Supreme Court decision	0.2
177	JML	14-Aug-2006	Review Garcetti decision and analyze its impact on the case	1.0
178	JML	14-Aug-2006	Review TSN brief regarding Garcetti case law affecting this case	0.5
179	JML	15-Aug-2006	Telephone to client and e-mail to TSN regarding S.Ct. decision	0.2
180	JML	18-Jun-2007	E-mail to RW regarding depositions of LM and MR and to CAH regarding affidavits of LM and MR	0.2
181	JML	19-Jun-2007	Review Complaint and deposition testimony of LM in County case	1.5
182	JML	19-Jun-2007	Review deposition testimony of MR in County case	0.1
183	JML	19-Jun-2007	Review memo from RW regarding trial testimony of LM and MR in NCC case	0.3
184	JML	19-Jun-2007	Review deposition of defendant Freeberry in County police case	2.0
185	JML	19-Jun-2007	Prepare questions for interviews of witnesses LM and MR	1.0
186	JML	20-Jun-2007	Continue preparing interview questions	0.5
187	JML	20-Jun-2007	Telephone to LM regarding interview	0.1
188	JML	20-Jun-2007	Draft letter to LM and MR regarding interview	0.3
189	JML	21-Jun-2007	E-mail to witness regarding interviews	0.2
190	JML	27-Jun-2007	Interview MR regarding case	2.0
191	JML	27-Jun-2007	Interview LM regarding case	2.2
192	JML	9-Jul-2007	Draft Declaration of LM	3.0
193	JML	10-Jul-2007	Draft Declaration of MR	3.0
194	JML	10-Jul-2007	Telephone to LM regarding additional facts for Declaration	0.1
195	JML	11-Jul-2007	Review Riddel original and first amended complaints for our First Amended Complaint	1.0
196	JML	12-Jul-2007	Telephone to MR regarding facts	1.4

	B	C		E
1	ATTY	Date	Description	Time
191	TSN	9/8/2004	Meeting with Steve.	0.3
192	TSN	9/9/2004	Review two e-mails from client and reply.	0.2
193	TSN	10/1/2004	Meeting with SJN.	0.1
194	TSN	11/30/2004	E-mail to JLR.	0.1
195	TSN	1/27/2005	E-mail to JLR>	0.1
196	TSN	1/29/2005	E-mail to JLR.	0.1
197	TSN	3/3/2005	Meet with JLR about the case.	0.2
198	TSN	3/15/2005	E-mail to JLR.	0.1
199	TSN	3/18/2005	meet with SJN about the settlement package.	0.3
200	TSN	3/18/2005	Email to co-counsel	0.1
201	TSN	3/22/2005	E-mail to JLR	0.1
202	TSN	4/18/2005	E-mails from JLR	0.1
203	TSN	4/22/2005	E-mail to co-counsel	0.1
204	TSN	5/12/2005	E-mail on witnesses	0.1
205	TSN	5/19/2005	Review e-mail from client	0.1
206	TSN	5/26/2005	E-mail to client	0.2
207	TSN	6/7/2005	E-mail to client	0.2
208	TSN	6/7/2005	E-mail from JLR and respond	0.1
209	TSN	6/8/2005	Speak with JLR about the facts	0.1
210	TSN	6/25/2005	Telephone with client	0.1
211	TSN	6/28/2005	Fact investigation	0.3
212	TSN	7/21/2005	E-mail from client and respond	0.2
213	TSN	8/23/2005	Discuss status of the case with JLR	0.1
214	TSN	8/25/2005	Letter to client	0.2
215	TSN	9/9/2005	E-mail to co-counsel	0.1
216	TSN	10/4/2005	E-mail from client and respond	0.1
217	TSN	3/18/2006	E-mail from client and respond	0.1

	B	C		E
1	ATTY	Date	Description	Time
218	TSN	6/1/2006	E-mail from client and respond	0.1
219	TSN	6/22/2006	E-mail from client and reply	0.1
220	TSN	6/22/2006	E-mail from client and reply	0.1
221	TSN	8/10/2006	Call from client	0.1
222	TSN	8/10/2006	E-mail to JLR and client	0.1
223	TSN	1/9/2007	Try to reach my client	0.1
224	TSN	1/9/2007	Telephone with client	0.1
225	TSN	1/12/2007	Review e-mail	0.1
226	TSN	3/8/2007	E-mail from client and respond	0.1
227	TSN	6/1/2007	E-mail from JLR and reply	0.1
228	TSN	6/7/2007	E-mail on evidence issue	0.2
229	TSN	6/18/2007	E-mail from client and reply	0.2
230	TSN	6/18/2007	E-mail on the stay	0.1
231	TSN	7/9/2007	Telephone with client	0.2
232	TSN	8/28/2007	E-mail on status	0.1
233	TSN	8/31/2007	E-mail to client	0.2
234	TSN	8/31/2007	E-mail to client	0.2
235	TSN	9/5/2007	E-mail from client and respond	0.2
236	TSN	9/25/2007	E-mail from JLR	0.1
237	TSN	12/8/2007	E-mail to co-counsel	0.2
238			Unspecified Time Neuberger Firm	10.7